



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Twenty Ninth day of July Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

CRL MP(MD) No.5691 of 2019

IN

CRL A(MD) No.SR12523 of 2019

STATE THROUGH
THE INSPECTOR OF POLICE,
CENTRAL BUREAU OF INVESTIGATION,
SPECIAL CRIMES BRANCH,
CHENNAI.
(RC.4/(S)/ 1994/ CBI/ SCB/ CHENNAI)

... APPELLANT/COMPLAINANT

Vs

SHRI SALIM SIRAJ GILLANI

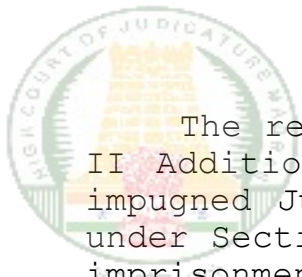
... RESPONDENT/ACCUSED.

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to condone the delay of 653 days in filing the Crl.Appeal along with Leave Petition and may further grant any other relief in the facts and circumstances of the case as deemed fit by this Honourable Court.

PRAYER IN CRL A(MD) No.SR12523 of 2019:

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to allow the Criminal Appeal, (i) by enhancing the sentence imposed on the Respondent/Accused No.5 Shri Salim Siraj Gillani by the Hon'ble Court of II Additional District and Special Judge for CBI cases, Madurai dated 21.04.2017, at par with the sentence imposed on other accused persons for the offences punishable U/Sec.120-B r/w 420 IPC and (ii) by convicting the Respondent/Accused-5 Shri Salim Siraj Gillani for the offences punishable 120-B r/w 467, 468, 381 and 471 IPC.

Order: This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.N.NAGENDRAN, Special Public Prosecutor for CBI for the Appellant and of Mr.I.Robert Chandrakumar, Advocate, on behalf of the Respondent, the court made the following order:-



The respondent was tried in C.C.No.3 of 2017 on the file of the II Additional District Court(for CBI Cases), Madurai and by the impugned Judgment, he was convicted only in respect of the offence under Section 120 B r/w 420 of IPC and sentenced to undergo rigorous imprisonment for ten months. In respect of the other charges, he was acquitted. Questioning the same, the prosecution has filed this appeal. In the process, there has been a delay of 650 days. To condone the same, this miscellaneous petition has been filed.

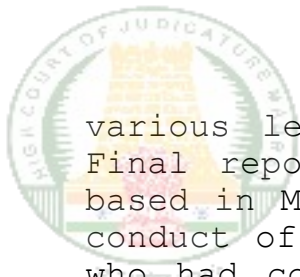
2. Notice was ordered in the condone delay petition. The respondent entered appearance through counsel has filed a detailed counter affidavit.

3. The learned counsel appearing for the respondent also placed a reliance on quiet a few reported decision. In the counter affidavit, it had been submitted that the impugned Judgment was reported on 03.05.2017. But then, the appeal was filed only on 15.04.2019. The only reason that has been assigned is that the delay was due to administrative reasons. The learned counsel appearing for the respondent would submit that for atleast 500 days, there is eventually no explanation whatsoever. The learned counsel would contend that the appeal will have to be preferred within 90 days. The appeal has not been preferred within the limitation period. Valuable rights accrue to the successful party in the litigation. In this case, if the delay is condoned, the rights accrued in favour of the respondent would stand unjustifiably taken away. The Hon'ble Division Bench of the Madras High Court in the decision reported in **2010 (3) MWN (Cr.) 220 (DB)** submitted that a duty was cast upon the State not only to putforth reasons but also valid and acceptable reasons.

4.I carefully considered the rival contentions.

5.Even though as rightly pointed out by the learned counsel appearing for the respondent that the delay due to administrative reasons cannot be indulgently viewed, I am of the view that in this case, the interest of justice requires that the delay is condoned. The petitioner has filed a detailed affidavit running to almost nine pages. From paragraph No.8 onwards, the petitioner has set out the reasons as to how the delay occurred. It is seen that the file was dealt with by more than twelve officials. We should not lose sight of the fact that even though an individual as well as the department should be placed on the same footing, one has to adopt a practical approach. The official is not personally affected as such. Therefore, he will not be evincing the same speed or alacrity which an unsuccessful litigant is bound to evince in the matter.

6. More than anything else, if an unsuccessful litigant wants to file an appeal, he need not consult anybody. But it is not so in the case of department. The issue will have to be dealt with at



various levels. The criminal case dates back to the year 1994. Final report was filed in the year 1998. The respondent who is based in Mumbai, was absconding for 17 years. Only because of the conduct of the respondent, the case came to be split up. A person who had contributed to the delay of a criminal case by almost 17 years, cannot be heard to oppose the delay in filling the appeal by the prosecution. This is because it relates to Bank fraud. This Court cannot lose sight of the fact that while the others convicted in the same case were sentenced to seven years rigorous imprisonment, the petitioner had been awarded only ten months rigorous imprisonment. It is seen that one such appeal filed by the co-accused is still pending before this Court. If there is no appeal filed by the prosecution against the impugned Judgment, certainly, it will have to bearing on the pending appeal.

7. Therefore, taking note of these circumstances, this Court is of the view that the delay occasioned in this case deserves to be condoned. The Miscellaneous Petition stands allowed.

sd/-

29/07/2019

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE II ADDITIONAL DISTRICT AND SPECIAL JUDGE FOR CBI CASES, MADURAI.
- 2 THE INSPECTOR OF POLICE, CENTRAL BUREAU OF INVESTIGATION, SPECIAL CRIMES BRANCH, CHENNAI.
- 3 THE SPECIAL PUBLIC PROSECUTOR FOR CBI CASES, MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL MP(MD) No.5691 of 2019

IN

CRL A(MD) No.SR12523 of 2019

Date :29/07/2019

AM/JC/SAR-1/26.08.2019/3P-4C