

08.01.2021
Sl. No.11

Court No.30
BM

C.R.M.S.P.L No.14 of 2019
With
IA No.: CRAN/1/2019 (Old No.CRAN 846 of 2019)
Enforcement Officer, Enforcement Directorate
Vs.
Laxmi Narayan Roy

Mr. Ranjan Kumar Roy ... for the appellant

Mr. Mrityunjoy Chatterjee for the respondent

The application under Section 5 of the Limitation Act, 1963 for condonation of delay in preferring an application for Special Leave to Appeal under Section 378(4) of the Code of Criminal Procedure is taken up for hearing and consideration.

The Enforcement Directorate, Foreign Exchange Regulation Act, Government of India, Ministry of Finance, appellant/complainant preferred this application for grant of special leave to appeal. The time to file appeal expire on 23.2.2018 so the delay in preferring special leave to appeal for a period of 66 days which period has been sought to be condoned in this application, inter alia, on the grounds enumerated hereunder:-

- i) That on 22.06.2018 the Learned 11th M. M. Court acquitted Mr. L. N. Roy on the basis of petition filed by the accused retracting and non examination of search witnesses.
- ii) That on 25.07.2018 the photostat copy of order received by the department from the advocate.

- iii) That on 07.08.2018 a detailed report regarding the matter was put up before DLA by AD(Lower Court) and also DLA, KLRO provided her comment on the matter.
- iv) That on 20.8.2018 the AD Lower Court put up the file to penalty recovery cell to provide present status of penalty.
- v) That on 27.08.2018 AD(PRC) put up his report in the file.
- vi) That on 28.08.2018 the AD Lower Court put up the file to JD and gave the detailed brief.
- vii) That on 29.08.2018 the JD directed to put up comments on the merit of the order of acquittal to AD Lower Court.
- viii) That on 03.09.2018 the AD(Lower Court) submitted his report.
- ix) That on 04.09.2018 the JD sought for legal opinion whether to accept the order or file appeal.
- x) That on 05.09.2018 the DLA gave her opinion to file appeal in this matter.
- xi) That on 10.09.2018 the file was referred to HC cell for taking necessary action.
- xii) That on 20.09.2018 the UO note sent to MOL for further necessary action.
- xiii) That on 10.10.2018 a Letter was received from MOL who asked for more documents such as certified copy of the depositions of witnesses, certified copy of all exhibits filed in the case and copy of complaint and charge sheet to examine the judgement 22.06.2018 in right perspective.

- xiv) That on 11.10.2018 it was requested by HC cell to lower court cell to procure documents through SPP, AD(Lower Court) wrote to SPP to arrange the certified copy of the documents.
- xv) That on 11.12.2018 the AD(Lower Court) put up file with a suggestion that the department may apply to the court for the certified copy as SPP could not arrange the same and it was approved to file the appeal through retainer counsel.
- xvi) That on 27.12.2018 the relevant documents were sent to Advocate Ranjan Roy to draft appeal memo.
- xvii) That on 30.12.2018 the draft appeal memo sent by Advocate Ranjan Roy to department.
- xviii) That on 14.01.2018 the AD, Lower Court verified the facts.
- xix) That on 16.01.2019 the draft was sent to LC for legal vetting by AD(High Court) Cell.
- xx) That on 21.01.2019 the draft appeal memo approved by the department.
- xxi) That on 25.01.2019 the sequence of events drafted by High Court Section for drafting the condonation of delay petition and put up for approval of joint Director.
- xxii) That on 29.01.2019 the sequence of event approved by JD and sent to Counsel shri Ranjan Roy, Advocate for preparation of draft.
- xxiii) That on 05.02.2019 the draft petition was drawn up
- xxiv) That on 06.02.2019 Shri Ranjan Roy, Advocate fell seriously ill and was confined to bed later to be

hospitalised. He was released on 22.02.2019. He is still recovering.

xxv) That on 11.02.2019 Shri Ranjan Roy, Advocate had managed to prepare the petition and application for Special Leave to Appeal and the applications and the grounds of appeal but could not be filed

xxvi) That on 26.02.2018 the petitions were affirmed and filed.

It is submitted that appeal involve sufficient and important question of law and is a meritorious one which is required to be heard on its merit. It is also submitted that the petitioner represent the collective cause of the community and considerable delay is consumed in process of making their decision but there has been no amount of latitude on their part. The sufficient cause should therefore, be considered with pragmatism in a justice oriented approach rather than taken direction for sufficient cause of everyday's delay. It is also submitted that the factors which are peculiar to and characteristic of the functioning of the Government would be cognizant to and require adoption of pragmatic in justice orientation process. It is settled principle of law that when delay is occasioned on behalf of the Government, it would be difficult to explain the day to days delay transaction of the business of the government being done by the officers. Accordingly, the appellant/petitioner has prayed for condonation of delay in granting special leave to appeal against the judgement and order of acquittal dated 26.2.2018 passed by 11th Metropolitan Magistrate, Calcutta in C. Case No.1479 of 2001/TR No.346 of 2001/Reg. No.111479 of

2001 in respect of charge under Section 9(1) (b) & 9(1) (d) and 63 of the Foreign Exchange Regulation Act, 1973.

In respect of such contention the learned counsel for the appellant/petitioner has relied on a decision in case of State of Haryana Vs. Chandra Mani and Others reported in AIR 1996 SC 1623 wherein it has been observed in paragraph 10 of the judgement.

To rebut the contention the learned advocate for the respondent has filed affidavit in opposition with the contention that the application for condonation of delay is required to be revised not only for inordinate delay but as the case lacks merit and would amount to wastage of precious time of the Hon'ble Court and the appeal also lacks benefit and unmeritorious. Accordingly, the application and special leave to appeal has been sought to be disposed on the ground that at the trial the prosecution examined witness in respect of their case to bring home charges for violation of provision under Section 9(1) (b) & 9(1) (d) and 63 of the Foreign Exchange Regulation Act, 1973 but none of the witnesses of the prosecution have supported the prosecution case. It is also submitted that there has been retracted confusion which fact has been indicated by the Court with the conclusion that conviction is not warranted in a case proceeded by the prosecution against the present respondent. In the matter of appreciation of evidence of witnesses it is not the number of witnesses counts are the quality of evidence are important to consider whether the conviction should lie or not. It is true that under Section 134 of the Evidence Act evidence is not counted. It is the quality of evidence which has to be brought

in mind to come to a conclusion so far as charge faced by the accused.

Be that as it may, in reply to the objection raised on behalf of the respondent the Enforcement Officer of Enforcement Directorate has submitted that the contention as raised above are the matters of appreciation in the hearing of the appeal on its merit.

The learned advocate Mr. Mrityunjoy Chatterjee, learned advocate for the respondent/opposite party relied on a decision in a case of *Postmaster General & Ors. v. Living Media India Limited & Anr.* reported in (2012) 3 SCC 563 to contend that law of limitation binds everybody equally including Government and defence by Government of impersonal machinery and inherited bureaucratic methodology cannot be accepted in view of modern technologies being used and available.

It is also pointed out that absence of diligence by the Department in prosecuting matter establish by evidence on record and that the public interest parameters though ought to be kept in mind by the Court while exercising discretion dealt with under Section 5 of the Limitation Act. The Court should be like the fact that the legal proceeding should not unnecessarily dragged and justice be served in the interest of justice and the application be consider only for the ends of justice.

The facts of the case is unduly on a different footing together and is not apposite to the facts of the instant case. However, I do understand that limitation sought to be condoned in the cited decision was on the explanation not properly offered for procuring certified copy of the impugned judgement and was not filed within prescribed period but was done only after about four months.

In this particular case the impugned judgement by which the opposite party/respondent was acquitted was on 22.06.2018 and the special leave to appeal has been sought for on 27.02.2019. Therefore, in consideration of the explanation offered in paragraph 10 appears to be sufficient explanation in my considered view. In the context what has been discussed above, the delay in preferring the special leave to appeal is considered and allowed. The delay of 66 day is hereby condoned.

Now the special leave to appeal is considered in view of the provision of Section 378(4) of the Code of Criminal Procedure as filed on behalf of the appellant and a special leave to appeal is granted.

Thus, CRMSPL No.14 of 2019 and IA No.:CRAN 1/2019 (Old No.CRAN 846 of 2019) both are disposed of.

Urgent xerox certified copy of this order, if applied for, be given to the learned advocates for the parties on the usual undertaking.

(Shivakant Prasad, J.)