

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

**CRMSPL 3 of 2019
With
CRAN 1 of 2019 (Old CRAN 245 of 2019)**

**Central Bureau of Investigation
Vs.
Biman Kumar Saha & Anr.**

For C.B.I. : Mr. Amajit De

**For the Opposite Parties : Mr. Abhra Mukherjee
Mr. Sudip Banerjee
Mr. Sauradeep Dutta**

Item No. 13

Heard on : 21.03.2022 and 23.03.2022

Judgment on : 23.03.2022

Bibek Chaudhuri, J.

This is an application under Section 5 of the Limitation Act
filed by the petitioner /intending appellant for condonation of delay

of 302 days in filing the appeal against the impugned judgment and order of acquittal.

The petitioner has delineated the reasons for delay in filing the appeal in paragraph 12 of the said application which is reproduced below:-

"12. That the reasons for the delay in filing is for the reasons as enumerated herein below:

- i) That on 14.12.2017 judgment and order was pronounced.
- ii) That on 14.12.2017 application was submitted for supply of certified copy of the judgment and order.
- iii) That on 22.12.2017 the certified copy was made ready and supplied.
- iv) That on 29.12.2017 the file was placed Sr. Public Prosecutor/CBI for his comments on the available records.
- v) That on 01.01.2018 the Sr. Public Prosecutor/CBI submitted his comments.
- vi) That on 18.01.2018 Superintendent of Police/CBI endorsed his comments and passed on the file.
- vii) That on 20.06.2018 the Head of the Branch submitted his comments.

- viii) That on 16.07.2018 the Dy. Legal Advisor presented his opinion and forwarded the file.
- ix) That on 18.07.2018 the Joint Director & Head of Zone recommended for filing of appeal.
- x) That on 18.07.2018 the file with the recommendations and opinion was forwarded to the Special Director/CBI/New Delhi.
- xi) That on 25.07.2018 the file with the recommendation of the Special Director/CBI/New Delhi was forwarded to the Director of Prosecution/CBI/New Delhi.
- xii) That on 25.07.2018 the Director of Prosecution/CBI/New Delhi forwarded the file to the Additional Legal Advisor/CBI/New Delhi for opinion.
- xiii) That on 10.08.2018 the Additional Legal Advisor/CBI/New Delhi with his comments forwarded the file to Director of Prosecution/CBI/New Delhi.
- xiv) That on 23.08.2018 the Director of Prosecution/CBI/New Delhi with his comments dated forwarded the file to Special Director/CBI/New Delhi.

- xv) That on 24.08.2018 Special Director/CBI/New Delhi with his comments forwarded the file to the Director/CBI/New Delhi.
- xvi) That on 27.08.2018 the Director/CBI/New Delhi approving the proposal recommended for challenging the impugned judgment and order.
- xvii) That on 30.08.2018 the file with the recommendation was received at CBI/Kolkata.
- xviii) That on 06.09.2018 the file with the recommendations was forwarded to the Department of Personnel & Training/Government of India for approval of the proposal.
- xix) That on 12.10.2018 the file with the approval of the Department of Personnel & Training/Government of India was received by the CBI/ACB/Kolkata.
- xx) That on 10.12.2018 Sh. Ranjan Kumar Roy, Advocate was engaged to draw-up and filed the appeal.
- xxi) That on 16.12.2018 the applications after being redrafted was forwarded to the Head of Branch/CBI/ACB/Kolkata for vetting.

xxii) That on 18.12.2018 the draft after being approved and vetted was returned for filing.

xxiii) That on 08.01.2019 the applications were reprinted and finalised for filing.

xxiv) That on 10.01.2019 the applications were affirmed and filed in the Hon'ble Court."

The opposite parties have filed affidavit-in-opposition against the aforesaid application under Section 5 of the Limitation Act. It is specifically stated by the opposite parties that the explanation for condonation of delay contained in paragraph 12 of the aforesaid application is vague, misconceived, speculative, baseless and bereft of better or more particulars. It is further stated by the opposite parties that official delay in according permission to the petitioner to file appeal against an order of acquittal cannot be said to be a sufficient cause for delay in filing the appeal.

At the time of hearing of the instant application it is submitted by Mr. Amajit De, learned advocate for the CBI that the Regional Office of the CBI at Kolkata has no authority to decide as to whether an appeal should be filed against an order of acquittal or not. The permission comes from Delhi office and only after getting the official permission, the CBI, Kolkata can file an appeal under Section 378(3) of the Code of Criminal Procedure against an order of acquittal.

It is further submitted by Mr. Amajit De that the impugned judgement and the order of acquittal was passed on 14th December, 2017. The CBI immediately filed an application for certified copy of the impugned judgment on the very date of the delivery of the judgment. There is no laches on the part of CBI, Kolkata Office. The certified copy was supplied on 22nd December, 2017. Therefore, the limitation started to begin from 23rd December, 2017. On 1st January, 2018 the senior Public Prosecutor, CBI submitted his comment to the effect that an appeal should be preferred against the impugned judgment an order of acquittal. Subsequently, the delay was caused in the office of the Superintendent of Police and the Head of the Branch. Thereafter inordinate delay was caused by different offices of CBI at Delhi in order to give permission to file an appeal. In this manner there was delay of 302 days in preferring the Memorandum of Appeal.

Learned advocate for the respondents/opposite parties on the other hand, submits that under the provision of Section 378, the State Government or the Central Government shall have to file an appeal from an order of acquittal within 90 days from the date of the impugned judgement and order of acquittal being passed. In support of his contention, he relied upon a decision of the Hon'ble Supreme

Court in the **State (Delhi Administration)-vs-Dharam Pal** reported in **AIR 2001 SC 2924**.

The learned advocate for the respondents further refers to a decision of the Division Bench of this Court in the case of **State of West Bengal -Vs- Manowar Ali Khan** reported in **2010, (4CHN) (Cal) 585**. It is pointed out by the learned advocate for the opposite party that in the above mentioned report the Division Bench of this Court refused to condone the delay of only 10 days and the appeal was dismissed on the ground of being barred by limitation. The learned advocate for the opposite party, however, over-looked that in **Manowar Ali Khan** (supra), the state of West Bengal being the appellant did not file any application under Section 5 of the Limitation Act for condonation of delay. In the absence of any application under Section 5 of the Limitation Act even single day's delay cannot be condoned. Therefore, ratio of this decision is not applicable under the facts and circumstances of this case. Placing reliance on the case of **Ajit Singh Thakur @ Anr-Vs- State of Gujarat** reported in **AIR 1981 SC 733** it is submitted by the learned advocate for the opposite party that the opposite party stands in a better position in the instant appeal because he was acquitted by the competent court of law. It is held in the aforesaid decision that where two reasonable conclusions can be drawn on the evidence on record, the High Court should, as a

matter of judicial caution, refrain from interfering with the order of acquittal recorded by the court below. In other words, if the main ground on which the court below has passed its order acquitting the accused, a reasonable and plausible ground can not be entirely and effectively dislodged or demolished, the High Court should not disturb the acquittal.

In my considered view the ratio of this judgment is also not applicable at this stage because existence of two reasonable conclusions can only be arrived at on appreciation of evidence. At the stage of hearing of the application under Section 5 of the Limitation Act the said stage of appreciation of evidence does not come at all.

A pertinent judgment on the point as to whether an application filed by the appellant being the agency of the State Government or Central Government should be allowed on the basis of citing certain dates where the official record was stuck off was considered by the Hon'ble Supreme Court in **Office of the Chief Post Master General & Ors. V. Living Media India Ltd. & Anr.** reported in **AIR 2012 SC 1506**. Paragraphs 12 and 13 are relevant for the purpose and quoted herein below:-

12) "It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up

the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

- 13) In our view, it is the right time to inform all the Government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable*

explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The Government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for Government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay”.

Close reading of the aforesaid paragraphs suggests that the Government or a Government agency is not a privileged litigant. The Government agency is required to explain the delay in the same manner like that of an ordinary litigant to get the relief of condonation of delay under Section 5 of the Limitation Act.

Relying on the decision of **Chief Post Master General** (supra) the Hon'ble Supreme Court refused to condone the delay in preferring the special leave in the case of **State of Odisha (Vigilance) –Vs- Purna Chandra Kandi (Special Leave Petition (Criminal) Diary No(s). 29657/2019** on 2nd September, 2019.

In the instant case, I have already quoted paragraph 12 of the application under Section 5 of the Limitation Act. The petitioner has stated in the said paragraph different dates when the file was sent to different offices of CBI. It has not been stated why the office of various heads of office of CBI took unusual time to release the record and finally allowed the appeal to be filed after expiry of 302 days of Limitation.

I am in agreement with the learned advocate for the opposite party that the appellant has not been able to come up with satisfactory explanation in support of its case for condonation of delay.

For the reasons stated above, the application under Section 5 of the Limitation Act is **dismissed** on contest, however, without any cost. Inordinate delay in filing the appeal is not condoned.

With the dismissal of the application under Section 5 of the Limitation Act, the Special Leave to Appeal is also treated to be **dismissed**.

(Bibek Chaudhuri, J.)

Suman/SK, A.R.s (Court)