

**18.04.2022**  
**Item No.18**  
**Suman**  
Ct.42

**CRMSPL 4 of 2019**  
**With**  
**CRAN 1 of 2019 (Old CRAN 246 of 2019)**

**Central Bureau of Investigation**  
**Vs.**  
**Mahendra Gourisaria & Anr.**

Mr. Amajit De  
...for the petitioner

Affidavit of service be kept with the record.

It appears from the service report that the private opposite party Nos. 1 and 2 left the address given in the charge sheet submitted by the C.B.I.

The opposite parties as accused persons contested the case in the trial Court. They did not raise any objection as regards their address. The prosecuting agency sent the notice of the application under Section 5 of the Limitation Act to the last known address of the opposite parties.

Therefore, this Court has every reason to hold that the notice was sent in proper address under registered cover and on payment of postal dues. In such case, presumption in favour of service may be raised. Moreover, it is held by the Division Bench of this Court in the case of **Miss D. Ennis vs. M/s. Calcutta Vyapar Pratistha Ltd. & Anr.** reported

in **AIR 1991 Cal 152** where the notice was sent in the last known address of the opposite parties and was returned with postal endorsement "left", service is presumed to be good service.

In view of such decision and considering the law relating to presumption of service under the General Clauses Act, this Court holds that the notice of the application under Section 5 of the Limitation Act is presumed to be served upon the opposite parties. Therefore, the application under Section 5 of the Limitation Act is taken up for hearing. The CBI, petitioner herein, has filed the application for special leave to appeal after expiry of 248 days and filed the instant application for condonation of delay. The petitioner has stated the grounds for delay in filing the special leave petition in paragraph 12 of the petition. I have perused the petition under Section 5 of the Limitation Act. In my view, the petitioner has been able to explain the reason for delay in filing the special leave to appeal to the satisfaction of this Court. There is sufficient ground for condonation of delay.

Accordingly, the delay of 248 days in filing the appeal is condoned. The application under Section 5 of the Limitation Act is allowed.

In Re. **CRMSPL 4 of 2019**

This is an application for special leave to appeal. This Court has perused the application as well as the impugned judgment. There is sufficient ground to grant leave to the

petitioner to prefer an appeal under Section 378(4) of the Code of Criminal Procedure.

Accordingly, the application for special leave to appeal is allowed.

The petitioner is directed to file Memorandum of Appeal within 30 days from the date of this order.

**(Bibek Chaudhuri, J.)**