



Crl.MP.Nos.9066, 9069 & 9070 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Date of Reserving Order 15.06.2022	Date of Pronouncing Order 04.07.2022
---------------------------------------	---

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.MP.Nos.9066, 9069 & 9070 of 2021

in

Crl.RC.Nos.sr13226, sr29846 & sr29854 of 2021

Crl.MP.No.9066 of 2021

The Deputy Chief Controller of Import and Export,
Shastri Bhavan, Haddows Road,
Chennai 600 006.

... Petitioner

Vs.

M/s.Traders Pvt. Ltd.,
Represented by
Shri Navinchandra R.Mehta,
Express Towers, Nariman Point,
Mumbai.

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 397 r/w 401 of
Cr.P.C., to condone the delay of 108 days in filing the Crl. Revision Petition.

For Petitioner : Mr.K.Srinivasan
Special Public Prosecutor for CBI Cases

For Respondent : Mr.S.Vijayaragavan



Crl.MP.Nos.9066, 9069 & 9070 of 2021

Crl.MP.No.9069 of 2021

The Deputy Chief Controller of Import and Export,
Shastri Bhavan, Haddows Road,
Chennai 600 006.

... Petitioner

Vs.

Saroj Goenka,
M/s.Traders Pvt. Ltd.,
Express Towers, Mumbai
(Now residing at)
Express Estates, Anna Salai,
Chennai 600 002.

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 397 r/w 401 of Cr.P.C., to condone the delay of 108 days in filing the Criminal Revision Case.

For Petitioner : Mr.K.Srinivasan
Special Public Prosecutor for CBI Cases

For Respondent : Mr.S.Vijayaragavan

Crl.MP.No.9070 of 2021

The Deputy Chief Controller of Import and Export,
Shastri Bhavan, Haddows Road,
Chennai 600 006.

... Petitioner

Vs.



Cr1.MP.Nos.9066, 9069 & 9070 of 2021

Aarthi Agarwal,
Residing at No.45-A,
Anitha Apartments,
Mount Piccent Road,
Malabar Hills, Mumbai.

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 397 r/w 401 of Cr.P.C., to condone the delay of 108 days in filing the Criminal Revision Case.

For Petitioner : Mr.K.Srinivasan
Special Public Prosecutor for CBI Cases

For Respondent : Mr.S.Vijayaragavan

COMMON ORDER

These Criminal Miscellaneous Petitions have been filed to condone the delay of 108 days in filing the respective Criminal Revision Cases by the Deputy Chief Controller of Import and Export.

2.The brief facts leading to filing of the above Petitions are as under:

2(a).The case in Crime No. RC.16/(S)/1987 was registered by CBI on 17.09.1987 on the information gathered by the Branch against M/s. Traders (P) Ltd., Ahmedabad under Section 420 IPC and Sec.5 of Imports and Exports



Crl.MP.Nos.9066, 9069 & 9070 of 2021

(Control) Act 1947. The FIR was forwarded to the Additional Chief Metropolitan Magistrate, Economic Offences, Egmore, Chennai.

2(b).After completion of investigation, a Complaint was filed by the Petitioner under Section 6 of the Imports & Exports (C) Act, 1947 before the Additional Chief Metropolitan Magistrate, EO-I, Chennai on 07.04.1989, in which it has been alleged that the accused persons (1) Late Rama Nath Goenka, Director of M/s Traders Pvt. Ltd., (il) Smt. Saroj Goenka, W/o. B.D. Goenka, Director of M/s. Traders Pvt. Ltd. (A-1), (iii) Aarthi Agarwal, Former Director of M/s. Traders Pvt. Ltd. (A-2), (iv) Late V. Ranganathan, Former Director of M/s. Traders Pvt. Ltd. and (v) M/s. Traders Pvt. Ltd, Express Towers, Nariman Point, Bombay (Respondent/A-3) entered into criminal conspiracy and in pursuance of the said criminal conspiracy, the accused persons imported 14 web off-set printing units under Open General Licence (OGL) obtained in the name of M/s.Traders Pvt. Ltd., shown to be for the purpose of starting a Gujarati news paper in Bombay and sold the same to Indian Express (Madurai) Ltd. in contravention of the provisions of the Licence, during 1985-86, thereby cheated the Government.



Cr1.MP.Nos.9066, 9069 & 9070 of 2021

WEB COPY

2(c).The Complaint was filed against the above said accused persons A-1 to A-5 for the commission of offences under Section 5 of the Imports & Exports Act, 1947 by virtue of the Notification No.10/1965 dated 01.12.1965 issued by Ministry of Commerce.

2(d).The Petitioner filed an Application on behalf of the Complainant under Section 302 of Cr.P.C. in EO CC No.341/1989, wherein he authorized the DLA, Senior Public Prosecutor and Public Prosecutor of CB1/Madras to appear before the Court on behalf of the complainant to file the accompanying complaint and to conduct the Prosecution in that case. It was also prayed to dispense with the personal appearance of the Complainant. The learned Additional Chief Metropolitan Magistrate, EO-I, Madras made an endorsement on the Application itself as "File if in Order". Thus, the Prosecution of the case is being conducted by the Public Prosecutor of CBI on behalf of the Complainant.



Crl.MP.Nos.9066, 9069 & 9070 of 2021

WEB COPY

2(e).It has been revealed during investigation that Late Ramnath Goenka, Smt. Saroj Goenka (A-1), Smt. Aarthi Agarwal (A-2) and Late Ranganathan were the parties to the criminal conspiracy to import machineries under OGL (Open General Licence) in the name of M/s. Traders Pvt. Ltd. (Respondent/ A-3) and to sell the same in favour of Indian Express (Madurai) Pvt. Ltd. without obtaining the requisite direction from the Chief Controller of Import and Export as mandate under Clause 10 (C) of the Imports (Control) Order 1955. The accused persons Saroj Goenka (A 1), Aarthi Agarwal (A-2) and M/s. Traders Pvt. Ltd. (Respondent/A-3) therefore liable to be prosecuted for the offences under Section 120-8 IPC and Section 5 of the Imports & Exports (Control) Act. Therefore, M.C.Devaraj (PW 1), then Deputy Chief Controller of Imports and, Exports, Chennai filed Complaint before this Court against the accused persons under Section 120-8 r/w Section 5 of IMPEX Act, 1947 as authorized by Section 6 of 5 of IMPEX Act, 1947 and trial of the same was held before the learned Additional Chief Metropolitan Magistrate, EO-I, Chennai vide EO C.C.No.341/1989.



Crl.MP.Nos.9066, 9069 & 9070 of 2021

WEB COPY

2(f).It has been alleged in the Complaint that Late Ramnath Goenka, Saroj Coenka (A-1), Aarthi Agarwal (A-2), Late Ranganathan and M/s.Traders Pvt. Ltd. (Respondent/A-3) by hatching criminal conspiracy with other accused persons, have also committed the offences punishable under Sections 120-B IPC r/w 132, 135 (1) (a) and 135 (1) of Customs Act. Hence, it is revealed that that the accused persons have committed offences punishable under Import and Export Act, 1947 as well as under Customs Act in the same course of transaction. In respect of the offences under Customs Act, Directorate of Revenue Intelligence (DRI) filed Complaint against M/s.Traders Pvt. Ltd. and 14 others under Section 120-B IPC r/w 132, 135 (1) (a) and 135 (1) (b) of Customs Act before the same Court viz. Additional Chief Metropolitan Magistrate, EO-1, Chennai vide E.O.C.C.No.766/1987.

2(g).The accused persons (i.e.,) A-1, A-2 & Respondent/A-3 had filed Crl. M.P.No.252/2018, Crl. M.P.No.253/2018 and Crl. M.P.No.254/2018 respectively for their discharge from the case. The learned Chief Metropolitan Magistrate EO-I, Chennai dismissed the Crl. Misc. Petitions filed by the accused viz. A-1, A-2 and Respondent/A-3 for their discharge. However, the



Crl.MP.Nos.9066, 9069 & 9070 of 2021

accused persons (i.e.,) A-1, A-2 and Respondent/A-3 have filed Criminal Revision Petitions vide Crl. RC No.42/2018, Crl. RC No.51/2018 and Crl. RC No.50/2018 respectively before the Court of Sessions at Chennai. The Court of Sessions, Chennai pronounced the Impugned Common Order dated 19.08.2019 wherein the Court allowed the Crl. Revision Petitions and discharged the A-1, A-2 & Respondent/A-3 respectively from the charges.

2(h).The Prosecution has decided to file Cri. Revision Petition against the impugned Common Order dated 19.08.2019 passed by the Court of Sessions, Chennai by discharging the accused persons viz. A-1, A-2 & Respondent/A-3 respectively.

3.In filing the above Criminal Revision case against the order passed by the learned Principal Sessions Judge, Chennai, there is a delay of 108 days and hence, these Petitions have been filed in the respective Crl.RCs for condoning the delay and an affidavit has been filed by the prosecution narrating the dates and events as to how the delay was caused, due to administrative exigency which are narrated hereunder:



Crl.MP.Nos.9066, 9069 & 9070 of 2021

WEB COPY

3(a).The Certified Copy of Common Order dated 19.08.2019 was made available to the Prosecution on 27.08.2019. After examining the Common Order dated 19.08.2019, the then Holding Investigating Officer (HIO) of the case submitted his comments on 06.09.2019.

3(b).After perusing and analyzing the Common Order dated 19.08.2019 along with the comments of HIO, the Public Prosecutor submitted his detailed comments on 03.10.2019 on the Common Order.

3(c)After perusing and studying the Common Order dated 19.08.2019 and the records therein including the comments of Holding Investigating Officer and the comments of Public Prosecutor, the Superintendent of Police/Head of Branch, Central Bureau of Investigation, Special Crime Branch, Chennai, made his detailed comments on 15.10.2019.

3(d).Comments of the Head of Branch along with comments of HIO and Public Prosecutor was forwarded to the Head of Zone/Joint Director, CBI, Chennai Zone, Chennai on 15.10.2019 for further necessary action.



Cr1.MP.Nos.9066, 9069 & 9070 of 2021

WEB COPY

3(e).File was marked by the Head of Zone/Joint Director, CBI, Chennai Zone, Chennai on 16.10.2019 to the Deputy Legal Advisor (DLA), CBI, Chennai Zone to offer his comments and legal opinion on the Common Order and the comments of Branch Officers. The Deputy Legal Advisor, CBI Chennai Zone, Chennai offered his comments/legal opinion on 23.10.2019 and then forwarded the file to the Head of Zone/Joint Direct CBI, Chennai Zore, Chennai.

3(f).After perusal of the Common Order dated 19.08.2019 along with the comments of HIO, FP, HOB and the DLA and after studying the case records, the Head of Zone/Joint Director, CBI, Chennal Zone, Chennai marked the file to the DLA for certain clarifications on 07.11.2019.

3(g).The DLA, CBI, Chennai Zone, Chennai answered for the clarification and forwarded the file to the Head of Zone/Joint Director, CBI, Chennai Zone, Chennai on 08.11.2019.



Crl.MP.Nos.9066, 9069 & 9070 of 2021

WEB COPY

3(h).After perusal of the clarification given by the DLA, the Head of zone/Joint Direction, CBI, Chennai Zone, Chennai marked the file to the Superintendent of Police/Head of Branch, CBI, SCB, Chennai for certain clarifications on 09.11.2019.

3(i).The Superintendent of Police/Head of Branch, CBI, SCB, Chennai answered to the clarification of the Head of Zone/Join Director, CBI, Chennai Zone, Chennai vide letter dated 13.11.2019.

3(j).The letter dated 13.11.2019 of SP/HOB, CBI, SCB, Chennai was received by the Head of Zone/Joint Director, CBI, Chennai Zone, Chennai on 13.11.2019 and the Head of Zone/Joint Director, CBI, Chennai Zone, Chennai made his comments and the same was forwarded to CBI Head Office, New Delhi on 14.11.2019.

4.Steps taken by the prosecution for preferring the revision for the period between 27.08.2019 to 02.12.2019 has been elaborately explained in the initial affidavit. During the course of argument, learned Special Public Prosecutor has



Cr1.MP.Nos.9066, 9069 & 9070 of 2021

WEB COPY

filed an additional affidavit narrating the subsequent dates and event, with regard to the queries raised by this Court for covering the period left out as follows:

4(a).The Holding Investigation Officer (HIO) studied the case records viz. FIR, Charge Sheet, Deposition of the Witnesses, Common Order dated 19.08.2019 of the Court of Sessions, Comments of all the Officers i.e. HIO, PP, SP/HOB, JD/HOZ, approvals of the Higher Officers and the Legal Opinion of ALA (H.Qrs.) along with the approvals of authorities in the Head Office, CBI, New Delhi and the HIO prepared Criminal Revision Petition with Grounds for Revision and Petition to Grant Leave under legal scrutiny in consultation with the Law Officers of CBI and submitted the draft Criminal Revision Petition on 14.01.2020.

4(b).After perusing the draft Criminal Revision Petition submitted by the holding Investigation Officer, the Sr. Public Prosecutor of SCB, CBI, Chennai returned the draft revision petition instructing the HIO to redraft the said revision petition with certain suggestions on 17.01.2020.



Crl.MP.Nos.9066, 9069 & 9070 of 2021

WEB COPY

4(c).The Holding Investigation Officer, who prepared the draft revision petition has been transferred from CBI, SCB, Chennai to CBI, EOB, Chennai on 24.01.2020 for administrative reasons and hence the said HIO has submitted the redrafted revision petition on 05.02.2020 for filing before this Court

4(d).Due to the transfer of the afore said HIO, the Head of Branch, CBI, SCB nominated the officer Dilip Kumar, Inspector of Police, CBI, SCB Chennai as HIO in the present case and also marked the file to him on 06.02.2020.

5.Learned counsel for the Respondent based upon the counter affidavit would contend that the administrative delay attributed and assigned by the CBI for the delay of 108 is nothing but pushing the files from here and there. There is no possible explanation much less any reasonable explanation for condoning the delay.



Crl.MP.Nos.9066, 9069 & 9070 of 2021

WEB COPY

6.Learned counsel for the Respondent relied upon the following orders in support of his contention:

(i)Order made by the High Court of Calcutta in the case of *Central Bureau of Investigation Vs. Biman Kuamr Saha & Anr* in CRMSPL 3 of 2019 with CRAN 1 of 2019 (Old CRAN.245 of 2019) dated 23.03.2022

(ii)Order made by the Gauhati High Court in the case of *Director, CBI Vs. Surendra Kumar Badiala & 4 others* in IA (Crl.)25(AP)/2018 in Crl.Rev.P.17(AP)/2018 dated 29.07.2019.

(iii)Order made by the Hon'ble Supreme Court in the case of *State of Odisha (Vigilance) Vs Purna Chandra Kandi* in *Special Leave Petition (Criminal) Diary No.29657/2019*, dated 02.09.2019.

7.The decision referred by the learned counsel for the Respondent in rejecting the condonation Petition by the Hon'ble Apex Court and other High Courts are taken into consideration.

8.As per the order passed by the learned Principal Sessions Judge, the three accused have been discharged from the trial case and the prosecution has



Crl.MP.Nos.9066, 9069 & 9070 of 2021

decided to prefer further revision before this Court and in filing the said Revision case, there is a delay of 108 days, due to administrative exigency. The delay has been duly explained by the prosecution as narrated in their affidavit which is stated supra.

9.I am not expressing any opinion on the merits of the main case. Taking into consideration the explanation offered by the prosecution is found to be sufficient cause to condone the delay, I am inclined to allow these Petitions, by condoning the delay of 108 days in filing the Criminal Revision.

10.Accordingly, these Criminal Miscellaneous Petitions are allowed.

04.07.2022

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order

sai



WEB COPY



Crl.MP.Nos.9066, 9069 & 9070 of 2021

RMT.TEEKAA RAMAN.J,

sai

Pre-delivery Order made in

Crl.MP.Nos.9066, 9069 & 9070 of 2021

in

Crl.RC.Nos.sr13226, sr29846 & sr29854 of 2021

Dated: 04.07.2022