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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.03.2022

Pronounced on : 28.03.2022

CORAM:

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

Crl.M.P.No.10222 of 2021

in

Crl.A.No.SR.31859 of 2021
& Crl.A.No.SR.31859 of 2021

State Represented by:

The Inspector of Police,
All Women Police Station,
Pollachi

(crime No.16/2015)

...Petitioner/Appellant

Vs.

A.Ramakrishnan

... Respondent/Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 5 of Limitation Act to condone the delay of 233 days in filing an appeal SR.31859/2021 against order of acquittal of the respondent/accused passed by the learned IV Additional District Judge / Sessions Judge, Mahalir Neethi Mandram (Mahila Court), Coimbatore(FAC) in Special CC.No.1 of 2016 dated 26.04.2019

For Petitioner : Mr.Leonard Arul Joseph Selvam,
Government Advocate(crl.side)

For Respondent : Mr.Sunder Mohan
for Mr.M.Krishnamoorthy

O R D E R

The present criminal miscellaneous petition has been filed to condone the delay of 233 days in filing the appeal as against the order of acquittal passed in Special CC.No.1 of 2016 dated 26.04.2019 by the learned IV Additional District Judge / Sessions Judge, Mahalir Neethimandram (Mahila Court), Coimbatore.

2. The petitioner is the State represented by the Inspector of Police, All Women Police Station, Pollachi. In the affidavit



filed in support of the criminal miscellaneous petition, the petitioner has stated that the petitioner on 04.10.2019 filed copy application for getting certified copy of the judgment and later the same was delivered to him on 12.11.2019. After obtaining the certified copy, the petitioner presented the case papers to the learned Special Public Prosecutor, Special Court, POCSO Act, Coimbatore to offer opinion in respect to the filing of appeal. The learned Special Public Prosecutor offered opinion on 17.08.2020 and after obtaining the opinion, proposal was sent to the Superintendent of Police, District Police, Coimbatore. In turn, the same was sent to the Joint Secretary to Government, Home(Cts-VII) Department dated 31.05.2021. Later the Government sent the proposal to the Office of the Public Prosecutor, High Court of Madras on 22.06.2021 vide Government Lr.No.28992/Cts.VII/ 2021-1 dated 21.06.2021 and the same was received by the Public Prosecutor's Office, High Court, Madras on 22.06.2021. After perusing the entire records, the Public Prosecutor, High Court of Madras thought that this is a fit case for filing an appeal against acquittal and accordingly sent a legal opinion to the Joint Secretary to Government in turn. Due to the said reasons, delay of 233 days has occurred.

3. The learned Government Advocate(crl.side) would contend that due to the administrative delay, the petitioner is unable to present the appeal within the period of limitation. Further, in the impugned judgment, without considering the evidence given by the prosecution witnesses in a perspective manner, acquitted the accused, which is erroneous in law. Further due to the lockdown announced by the Government and also due to the exemption given by our Hon'ble Apex Court, the appeal papers have not been presented immediately within the limitation and therefore, it would be necessary to condone the delay.

4. Per contra, the respondent / accused has filed counter stating that he was charged under Section 3 r/w 5(1)(m) r/w 6 of POCSO Act, 2012 in Special CC.No.1 of 2016 and the learned IV Additional District Judge / Sessions Judge, Magalir Neethimandram, Coimbatore (FAC) held that the prosecution failed to prove its case and consequently he was found not guilty and was acquitted of all charges by the judgment dated 26.04.2019, against which the present criminal appeal has been filed. He further stated that the judgment was passed on 26.04.2019 and the application for the certified copy of the judgment was filed on 04.10.2019 with a delay of 162 days and from the date of the certified copy being made ready i.e. on 11.11.2019 to the date of filing of the appeal on 08.09.2021, there was a delay of 668 days, in all, totally 830 days. He further submits that the period of limitation for filing an appeal against an order of acquittal is 90 days, however there has been no explanation from the prosecution for the inordinate delay of 162 days in filing



the application for the certified copy of the judgment. He further submits that it is a settled law that each day's delay has to be properly explained. According to him, there is no proper explanation for the delay in filing the appeal after obtaining the order copy.

5. Submissions made by the learned counsels on either side are considered.

6. The learned counsel appearing for the respondent raised objection in three folds: (i) Number of days calculated by the complainant is not found correct. (ii) Further, the administrative delay in filing the appeal is not a ground for condoning the delay. (iii) Sufficient cause is not shown by the petitioner for condoning the delay in preferring the appeal. According to him, there was a delay of 830 days in filing the appeal.

7. Now on considering the said submissions with the relevant records, now initially on go through the copy of the judgment enclosed along with the petition, it appears copy application has been filed on 04.10.2019 after lapse of nearly six months from the date of judgment and thereafter, the copy of the judgment was delivered on 12.11.2019. Thereafter the present application has been filed on 08.09.2021. Though the period from 15.03.2020 to 15.03.2021 is excluded for calculating the limitation, here it is a case, on the date of receipt of the judgment by the petitioner, the period of limitation expired. Therefore, calculating the period of delay as 233 days is a total error committed by the petitioner.

8. So in view of the above, I am of the opinion that the petitioner has not approached this court with correct details.

9. Secondly, in respect to the administrative delay, in a case of Postmaster General Vs. Living Media India Limited reported in (2012) 3 SCC 563, the Hon'ble Apex Court has held in paragraphs No.28 to 30 and 32, as follows:

'28. 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 bonafides, 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.



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29. 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 bonafide 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 the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. 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.

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32. In the light of the above discussion, the appeals fail and are dismissed on the ground of delay. No order as to costs.

Hence in view of the above, law is settled that the administrative delay is not a reason for condoning the delay.

10. Now, another one important point yet to be decided in this application is that whether the petitioner has shown a sufficient cause for condoning the delay.

11. Now on going through the affidavit filed by the petitioner, as already stated, the copy of the judgment was delivered with a delay. After withholding the mistake committed by the petitioner, has simply blamed the authorities and the same cannot be accepted as a sufficient cause. In this regard, in the decision reported in the case of Calcutta Municipal Corporation vs. Pawan Kumar Saraf (Three Judges Bench) reported in (1999) 2 SCC 400, the Hon'ble Apex Court in paragraph No.18 held as follows:

18. This special Leave Petition is barred by 309 days. It is against an order made in revision by the Calcutta High Court upholding the order of the trial court acquitting the respondent of an offence under Sections 7/16 of the Prevention of Food Adulteration Act, 1954 (Act, for short). There is an



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application by the petitioner seeking condonation of delay in filing this petition. Reliance has been placed on a decision of this Court in [Collector, Land Acquisition, Anantnag and Anr. v. Mst. Katiji and Ors.](#), AIR (1987) SC 1353. It was submitted that the Court should be liberal in condoning the delay. Liberal all right, but delay is inexcusable unless sufficient cause is shown. It is not the law that when an application seeking condonation of delay is filed by the State or any authority, this Court must invariably condone the delay irrespective whether sufficient cause is shown or not. In [Ramlal & Ors. v. Rewa Coalfields Ltd.](#), AIR 1962 SC 361, this Court said :

"In construing s.5 of the [Limitation Act](#) it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be lightly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in [Krishna v. Chathappan](#), ILR 13 Mad. 269.

"[Section 5](#) gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant".



12. Accordingly, applying the principles set out in the above referred judgment, I am of the opinion that the affidavit filed by the petitioner seeking condonation of delay is not having any prima facie case. The petitioner mechanically mentioned the wrong date about the filing of copy application and about the delivery of judgment and stated that due to the reason that there was a delay in getting the opinion, the delay has occurred. The said reasons stated by the petitioner would not be termed as a sufficient cause. Therefore, this Court is not inclined to condone the delay.

13. Accordingly, this criminal miscellaneous petition is dismissed. Consequently, connected appeal in CrI.A.No.SR.31859 of 2021 is rejected.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

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To

- 1.The learned IV Additional District Judge /
Sessions Judge, Mahalir Neethi Mandram (Mahila Court),
Coimbatore(FAC).
- 2.The Inspector of Police,
All Women Police Station,
Pollachi
- 3.The Public Prosecutor,
High Court of Madras

+2ccs to Mr.M.Krishnamoorthy, Advocate SR.No.20989

CrI.M.P.No.10222 of 2021
in CrI.A.No.SR.31859 of 2021
& CrI.A.No.SR.31859 of 2021

AJS(CO)
GMY(19/04/2022)