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CRL.M.P.(MD).No.6590 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2021

Delivered on : 05.01.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.M.P. (MD) .No.6590 of 2021

and

CRL.A (MD) No.SR22825 of 2021

State by
Public Prosecutor,
High Court, Madras.
(in Crime No.6 of 2006,
on the file of the Inspector of Police,
Vigilance and Anti-Corruption,
Madurai.

: Appellant/Complainant

Vs.

1.K.Subburaj

P.Kamatchi
(died on 01.05.2021)

: Respondents/A1 and A2

PRAYER in CRL.M.P. (MD) .No.6590 of 2021 : Criminal Miscellaneous Petition filed under Section 5 of the Limitation Act, to condone the delay of 1082 days in filing the appeal against the acquittal judgment passed in Special Case No.1 of 2011, dated 30.12.2016 on the file of the Special Court for Trial of Prevention of Corruption Act Cases, Madurai.

PRAYER in CRL.A (MD) No.SR22825 of 2021 : Criminal Appeal filed under Section 378(i) of Cr.P.C., against the judgment dated 30.12.2016 in Special Case No.1 of 2011 on the file of the Special Court for Trial under Prevention of Corruption Act Cases, Madurai, acquitting the respondent/accused for the offence punishable under Section 7 and 13 (1) (d) r/w 13(2) of the Prevention of Corruption Act, 1988.

For Petitioner : Mr.RMS.Sethuraman,
Additional Public Prosecutor.

For Respondent : Mr.V.Kathirvelu, Senior Counsel,
for Mr.K.Prabhu.

ORDER

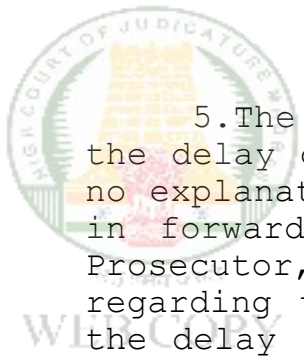
The Criminal Miscellaneous Petition is filed by the State represented by the Public Prosecutor, High Court, Madras, seeking orders to condone the delay of 1082 days in filing the appeal challenging the judgment of acquittal passed in Special Case No.1 of 2011, dated 30.12.2016 on the file of the Special Court for trial of Prevention of Corruption Act cases, Madurai.



2.It is not in dispute that one Varadharajan has preferred a complaint alleging that the first respondent/first accused Village Administrative Officer had demanded Rs.3,000/- as bribe for himself and for the second respondent/second accused Firka Surveyor, both working in the Vadipatti Taluk Office, Madurai District, for patta transfer and on that basis, case came to be registered in Crime No.6 of 2006 for the offence punishable under Section 7 of Prevention of Corruption Act and that subsequently, final report was laid.

3.It is also not in dispute that the learned Special Judge has passed the impugned judgment in Spl.C.No.1 of 2011, dated 30.12.2016, holding that the offences under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act were not proved, acquitted the respondents/accused under Section 248(1) of Cr.P.C. Aggrieved by the judgment of acquittal, the State has come forward with the present appeal along with petition for leave to file an appeal and the above petition to condone the delay in filing the appeal.

4.It is evident from the affidavit filed by the Inspector of Police, Vigilance and Anti Corruption, Madurai, in support of the delay condonation petition that after the judgment was pronounced on 30.12.2016, the certified copy of the judgment was applied on 30.12.2016 and obtained the same on 03.01.2017, that they have sought for opinion from the Deputy Legal Advisor (Vigilance and Anti Corruption) Madurai on 04.01.2017 and he offered his opinion on 06.01.2017, that the proposal was sent to the Director of Vigilance and Anti Corruption, Chennai on 06.01.2017, who in turn sent the proposal to the Secretary to Government, Revenue (POL-VI) Department, Secretariat, Chennai on 30.01.2017, that the Government sent the proposal to the Office of the Public Prosecutor, High Court, Madurai on 19.07.2017 and the same was received by the Public Prosecutor's Office on 26.07.2017, that the Public Prosecutor has sent his legal opinion to the Deputy Secretary to Government, Revenue Disaster Management Department on 20.11.2019 and on that basis Government Order was issued in G.O(2D) No.5, dated 10.01.2020, that the Inspector of Police, after receiving the Government Order on 07.02.2020 collected all the relevant papers in connection with the filing of appeal and appeared before the learned Public Prosecutor and as per the advice of the Public Prosecutor, filing papers were prepared and submitted for verification on 28.09.2020, that the Public Prosecutor gave instructions to the Inspector of Police during December 2020 and that thereafter, they have filed the appeal on 25.08.2021 before this Court by alleging the above reasons. The petitioner/appellant has now sought to condone the delay of 1082 days in preferring the appeal against the acquittal judgment, dated 30.12.2016.



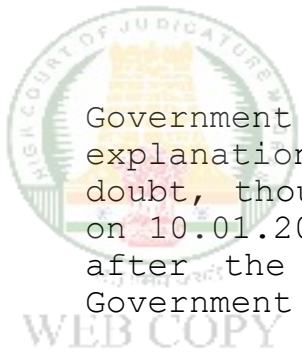
5.The first respondent has filed the counter affidavit opposing the delay condonation application and further stated that there are no explanations from the State with regard to the delay of 6 months in forwarding the case for opinion to the Office of the Public Prosecutor, that the petitioner's affidavit has no explanation regarding tracking of any events from 19.07.2017 to 20.11.2019 and the delay for the said period is not explained, that the State has also not explained the delay of two months in issuing the Government Order, that the appeal has been preferred after the lapse of more than 1 1/2 years, since the issuance of Government Order, that though this Court has resumed functioning effectively through video conferencing as early as from June 2020 after Covid-19 pandemic, the reason of pandemic cited by the appellant is evasive and unacceptable, that the trial Court after an elaborate trial by examining 13 witnesses and by exhibiting 21 documents, has held that the demand and acceptance of bribe was not proved by the prosecution and as such, the appeal against the judgment of acquittal is devoid of merits, that the inordinate delay of 1082 days in preferring the appeal, which is willful and wanton cannot be condoned and that therefore, the above petition is liable to be dismissed.

6.Heard Mr.RMS.Sethuraman, learned Additional Public Prosecutor and Mr.V.Kathirvelu, learned Senior Counsel appearing for the respondents.

7.It is not in dispute that the learned Special Judge has pronounced the judgment of acquittal on 30.12.2016. Even according to the petitioner/appellant, they have applied for the certified copies of the judgment on 30.12.2016 itself and received the certified copies of the judgment on 03.01.2017 itself.

8. It is also not in dispute that the Deputy Legal Advisor to the Vigilance and Anti Corruption in Madurai, offered his opinion on 06.01.2017 and the proposal was sent to the Director of Vigilance and Anti Corruption, Chennai on the same day i.e., 06.01.2017 itself. According to the petitioner, the Director of Vigilance and Anti Corruption sent the proposal to the Secretary to the Government on 30.01.2017 and the Government in turn sent the proposal to the Office of the Public Prosecutor, High Court, Chennai on 19.07.2017 and the same was received by the Office of the Public Prosecutor on 26.07.2017. As rightly pointed out by the learned counsel for the first respondent, the petitioner has not offered any reason for the delay occurred between 06.01.2017 and 30.01.2017, the period in which the proposal was with the Directorate of Vigilance and Anti Corruption and subsequently for the period between 30.01.2017 and 19.07.2017, the period during which the proposal was with the Government.

9.It is pertinent to note that the Office of the Public Prosecutor sent their legal opinion to the Deputy Director to



Government on 20.11.2019. Admittedly, there is absolutely no explanation for the period between 26.07.2017 and 20.11.2019. No doubt, though the Government has issued the order in G.O.(2D) No.5, on 10.01.2020, the appeal was filed on 25.08.2021 before this Court, after the lapse of more than 18 months, since the issuance of Government Order.

10.No doubt as usual, the petitioner has also cited Covid-19 pandemic and consequent lock-downs declared by the Central and State Governments as the reasons for the delay for the period subsequent to the receipt of Government Order by the petitioner. But as rightly contended by the learned counsel for the respondent, this Court has permitted filing of the cases through drop box system and also commenced virtual hearings from June 2020 onwards.

11. As rightly contended by the learned counsel for the first respondent, the petitioner has not shown any other reason or ground for the delay, since the issuance of Government Order dated 10.01.2020. At this juncture, it is necessary to refer the judgment of Honourable Supreme Court in **Office of the Chief Post Master General and Others Vs. Living Media India Limited and another** reported in **2012 (3) SCC 563**, relied on by the learned counsel for the first respondent and the relevant passages are extracted hereunder :

"10.....

29. It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.

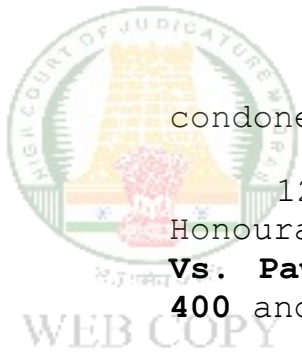
11) We have already extracted the reasons as mentioned in the "better affidavit" sworn by Mr. Aparajeet Pattanayak, SSRM, Air Mail Sorting Division, New Delhi. It is relevant to note that in the said affidavit, the Department has itself mentioned and is aware of the date of the judgment of the Division Bench of the High Court in LPA Nos. 418 and 1006 of 2007 as 11.09.2009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only on 08.01.2010 and the same was received by the Department on the very same day. There is no explanation for not applying for certified copy of the impugned judgment on 11.09.2009 or at least within a reasonable time. The fact remains that the certified copy was applied only on 08.01.2010, i.e. after a period of nearly four months. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person in-charge



has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps.

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 bonafide, 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 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 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

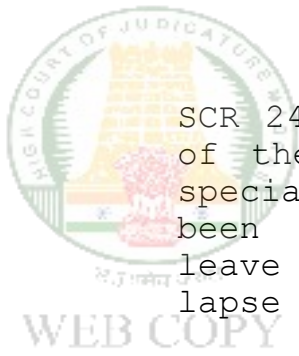


condone such a huge delay."

12. Learned Counsel has also relied on the decision of Honourable Supreme Court in **Calcutta Municipal Corporation Vs. Pawan Kumar Sarf and another** reported in 1992 (2) SCC 400 and the relevant paragraphs are extracted hereunder :

"21. In para 4 of the application, petitioner has described the following circumstances which according to it would amount to sufficient cause for the court to condone the delay :

"The impugned order was passed on 13.08.1997, however, as the Ld. Advocate for the petitioner Corporation in the High Court did not communicate the result of the case to the Corporation, the Certified Copy of the same could be applied only upon knowing the result on 12.02.1998. Accordingly, the Certified Copy of the Order was ready for delivery on 20.04.1998. The same was collected by the officers of the Law Department of the Petitioner Corporation during May, 1998, and a decision to file the SLP was taken during June, 1998. The Advocate-on-record for the Petitioner was instructed to file the S.L.P. upon re-opening of this Hon'ble Court after summer vacations. Upon examination of the papers sent for filing S.L.P. it was found that the same were insufficient to draft the S.L.P. Accordingly, vide letter dated 14.07.1998, a requisition was sent for forwarding the required documents, this requisition was followed by a reminder dated 27.07.1998. The Officer of the Corporation visited Delhi in connection with this case and other matters on 02.09.1998, but again without Annexure P-2 to the S.L.P., though the S.L.P. was finalised and the Affidavit was sworn by the Officer of the Corporation but for want of Annexure P-2 to the S.L.P. the same could not be filed. The Annexure P-2 to the S.L.P. was received on 15.09.98, and thereafter this S.L.P. was filed without any delay." Annexure P-2 is a report of the Central Food Laboratory dated November 2, 1989. It is not that this report was not with the petitioner. On the face of it, there appears to be no sufficient cause to condone the delay. We did not think it even necessary to issue notice on this application and dismissed the application. It is only when circumstances mentioned in the application before this Court would show sufficient cause to condone the delay that notice is required to be issued. Rule 10 of Order XVI of the Supreme Court Rules, 1966 provides that where a petition for special leave has been filed beyond the period of limitation prescribed therefore and is accompanied by an application for condonation of delay, the Court shall not condone the delay without notice to the respondent. In *Ram Lal Kapur & Sons (P) Ltd. v. Ram Nath and Ors*, [1963] 2



SCR 242, a preliminary objection was raised to the hearing of the appeal by the respondent that this Court granted special leave ex parte and it should be revoked as having been improperly obtained. Application (petition) seeking leave was filed after a great deal of delay, i.e., after lapse of 4 years. The Court observed :

"It is obvious that it was an application which had been filed far beyond the period of limitation prescribed by the rules of this Court. Learned Counsel for the respondent urged that there were no sufficient grounds for condoning that long delay and that we should therefore revoke the leave."

13. In a similar case, the learned Single of this Court in **State Vs.M.Selvamoorthy** reported in **2019 (4) MLJ (Cri) 7**, while considering the application to condone the delay of 506 days in preferring the appeal against the acquittal judgment for the offence under the Prevention of Corruption Act, listed out the delayed period in a tabular column and held as follows:

"(22) From the above, this Court is able to see that there had been a lethargic and ineffective administration by the petitioner/appellant/State at various stage of moving the file from one table to another, in particular, between 10.01.2017 and 07.02.2017; 07.02.2017 and 06.06.2017 ; 06.06.2017 and 13.07.2017 ; 13.07.2017 and 03.08.2017 ; 03.08.2017 and 11.10.2017 ; 11.10.2017 and 07.12.2017 ; 26.12.2017 and 01.02.2018 ; 01.02.2018 and 20.04.2018 ; 14.05.2018 and 30.08.2018 ; 30.08.2018 and 14.11.2018 ; 14.11.2018 and 11.01.2019 ; 11.01.2019 and 11.02.2019 ; and 11.02.2019 and 10.06.2019.

(23) It is seen from the above Tabular Column that the learned Public Prosecutor, has, originally given an opinion on 07.02.2017, stating that it is not a fit case for filing an appeal and thereafter, after a considerable delay, nearly after ten months, which has not been properly explained, opinion had been sought for from the learned Advocate General of Tamil Nadu by the Deputy Secretary to Government, Home [Pol-IV.A] Department, Secretariat, Chennai, on 26.12.2017, to offer an opinion for filing an appeal against acquittal and a reminder requisition was also sent to the learned Advocate General on 30.08.2018 and even after obtaining the opinion from the learned Advocate General on 14.11.2018, the appeal had not been filed immediately and had been filed after 11 months. The file was moving from one table to another and finally, on 11.01.2019, the Additional Chief Secretary to Government, Home [Pol-IV.A] Department, has given consent to file the appeal and even then, there had been a delay of nearly five months in preferring the appeal against acquittal.

(24) I have gone through the affidavit filed in support of Crl.MP.No.7908/2019 and also consciously perused



the entire records. Originally, an affidavit has been casually filed without properly calculating the number of days delay. Thereafter, a petition for amendment in Crl.MP.No.9990/2019 has been filed and even in the said amendment petition, no pleadings had been made showing sufficient cause and offering plausible and tenable explanations. In the opinion of this Court, the petitioner/appellant/State has neither shown any sufficient cause nor offered any plausible, probable and acceptable explanation for condoning such a huge delay except citing administrative delay and stating the various dates when the file moved from the concerned authorities. Hence, this Court is of the considered view that this is not a fit case wherein, the inordinate delay could be condoned and the appeal could be entertained."

14.In the case on hand also, as already pointed out, the petitioner/appellant has not even whispered any reason or cause for the delay of 1082 days. It is pertinent to note that the Inspector of Police has filed the affidavit in support of the delay condonation petition in a casual manner mentioning certain dates.

15.As rightly pointed out by the learned counsel for the first respondent, there is neither any pleading nor any material to show that there was sufficient cause for the delay. Since the delay is inordinate, it is for the applicant to plead and prove any acceptable reason or explanation or sufficient cause for the delay occurred at various levels. But as already pointed out, the petitioner has neither shown any sufficient cause nor offered any acceptable reason or explanation for condoning such huge delay of 1082 days. The reason of administrative delay, by no stretch of imagination can be considered as a sufficient cause or explanation to condone the delay. As already pointed out, since this Court has commenced virtual hearings of the cases and also permitted for filing of the cases, the reason of Covid-19 pandemic and consequent lock-downs cannot be considered as a reason or ground for condoning the delay for nearly 3 years.

16.As rightly contended by the learned counsel for the first respondent, the learned Sessions Judge after full fledged trial by examining 13 witnesses and by exhibiting 21 documents has come to the conclusion that the prosecution has miserably failed to prove the charges against the accused and consequently acquitted them. Moreover, since the appeal is yet to be taken on file, this Court is not expected to go into the merits of the case and to see whether the judgment of acquittal is liable to be sustained or overturned.

17.On considering the above facts and circumstances and in the absence of any acceptable reasons or sufficient cause for the delay occurred, this Court is of the clear view that this is not a fit case to condone the inordinate delay and to entertain the appeal. Hence, this Court concludes that the above petition is devoid of merits and the same is liable to be dismissed.



18. In the result, the Criminal Miscellaneous Petition is dismissed. Consequently, the Criminal Appeal is rejected at the SR stage itself.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Judge, Special Court for Trial of Prevention
of Corruption Act Cases, Madurai.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/S.K.PRABHU, Advocate, SR-639 dated 06/01/2022

CRL.M.P. (MD) .No.6590 of 2021
and

CRL.A (MD) No.SR22825 of 2021
05.01.2022

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