

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

CRMSPL 16 of 2022

With

CRAN 1 of 2022

With

CRAN 2 of 2022

Central Bureau of Investigation

Vs.

Shri Raj Kumar Lodha & Ors.

For the CBI/Petitioner

:Mr. Anirban Mitra, Adv.

For the opposite party nos.
1,2, 3,5 & 6

:Mr. Lal Mohan Hajra, Adv
Mr. Somesh Panja, Adv.
Mrs. Anuradha Hazra, Adv.
Mrs. Moutusi Hazra, Adv.

For the opposite party no. 4

:Mr. Satadru Lahiri, Adv.
Mr. Sourav Paul, Adv.

Heard on : June 21, 2023
Judgment on : June 28, 2023

Bibhas Ranjan De, J.

1. I am dealing with an application for condonation of delay under Section 5 of the Limitation Act, 1963 for filing special leave to appeal against the judgement and order of acquittal passed on 09.03.2018 by the Ld. Special Judge, C.B.I Court no. 2, Bichar Bhawan in connection with Spl. Case No. 67/11 arising out of R.C No. 06A/2000 of CBI ACB, Kolkata.

2. Impugned judgement was passed on 09.03.2018 and petition for condonation of delay in filing special leave to appeal, was filed on 30.03.2022 i.e. almost after 4 years. Grounds for delay have been explained in the petition for condonation of delay are set out below:-

- (i) The Certified Copy of the Judgement and order dated 6th March, 2018 was obtained on 02.04.2018 and thereafter the same was sent to Learned Public Prosecutor of CBI for his comments. Comments of the Learned Spl. Public Prosecutor of CBI were received on 16th May, 2018.

- (ii) Thereafter the file was placed before the Superintendent of Police for his comments, who gave his comments on 26th May, 2018.
- (iii) Head of Branch, CBI, ACB, Kolkata and Dy. Legal Advisor, CBI gave their comments on 12th July, 2019 and 22nd July, 2019 respectively.
- (iv) Upon perusal of the impugned judgment and other relevant material, on 06.08.2019, the Joint Director & Head of Zone, CBI, Kolkata Zone recommended for filing Appeal against the impugned Judgement, where after, the file was sent on 06.08.2019 to the Director of Prosecution, CBI HO, New Delhi.
- (v) The Director of Prosecution Marked the file to ALA (Consultant marked the file to ALA (Consultant) submitted his comments on 14.08.2019 and he marked the file to the Director of Prosecution who recommending for filing Appeal against the impugned Judgment passed by the Learned Special Judge, and marked the file to the Additional Director in CBI, HO at New Delhi on 16.08.2019.

- (vi) Additional Director, CBI placed the file before Director, CBI for approval for filing Appeal against the impugned judgment.
- (vii) On 17.08.2019, the Director, CBI accorded approval to the unanimous recommendation of the hierarchy for filing Appeal against the impugned judgement and order of the Learned Judge, Special (CBI) Court no. 2 Bichar Bhawan, Calcutta, where after, the file was returned to the Branch by CBI HO through the Zonal Officer of CBI at Kolkata. The file was received back to CBI, ACB, Kolkata Branch on 21.08.2019.
- (viii) Pursuant to the receipt of the approval of the Director, CBI for filing Appeal against the impugned Judgement and order, a self contained note was prepared by CBI, ACB Kolkata for seeking the requisite approval of the Central Government for filing appeal against the impugned judgement under Section 378 (2) Cr.P.C. and after obtaining the approval of the Head of Zone. CBI, Kolkata, the self Contained Note was forwarded to the Department of personnel and Training, Government of India at New Delhi on 09.09.2019. The date of expiry of

limitation period for filing the appeal was duly communicated to them.

- (ix) The matter was pursued by CBI to the Department of Personnel & Training, Government of India and requesting them to convey the approval of the Central Government for filing Appeal at an early date.
- (x) The proposal to file Appeal against the impugned judgement and Order was examined by the Department of Personal and Training, in consultation with the Department of Legal Affairs, Ministry of Law and Justice, Government of India.
- (xi) The approval of the Central Government for filing appeal against the impugned judgement was conveyed to the Head of Branch, CBI, ACB, Kolkata by the Department of Personal and Training, Government of India, vide their ID dated 10th August, 2018, which was received by CBI, ACB, Kolkata branch on 11.10.2019 along with the copy of advice of the Department of legal Affairs, Ministry of Law and Justice, Government of India on the proposal of CBI for filing Appeal.

- (xii) Thereafter, the draft application under Section 378(3) of the Cr.P.C for filing appeal against the impugned judgement was prepared and it was not legally vetted by the law Officers of CBI.
- (xiii) That in view of the order passed on 10.01.2022 by the Hon'ble Apex Court in M.A no. 21 of 2022. It was clearly stated that in computing the period of Limitation period for filing any Suit, Appeal, Application or proceeding, the period from 15.03.2020 to 28.02.2022 shall be excluded.
- (xiv) That the aforesaid copy of the draft application for filing Special Leave to Appeal along with Section 5 application was forwarded to the Learned Additional Solicitor General of India on 17.09.2021 for filing of the same before the Hon'ble High Court at Calcutta.
- (xv) That the petitioner states that after perusing the documents for filing Special Leave to Appeal, the Learned Advocate Mr. Anirban Mitra found that the copy of impugned order, F.I.R. and sanction order is annexed but no copy of charge sheet along with the statements under Section 161 of Cr.P.C. and the entire deposition and cross examination of the prosecution witnesses were not

available, as a result Mr. Mitra requested the concerned Officer of the C.B.I. to supply the papers at the earliest and letter dated 21.10.2021 and 26.10.2021 has been sent to the authority to supply the copy at the earliest and the said copy of the aforesaid copies were available to Mr. Mitra on 26.11.2021 and thereafter the drafting the said applications both the special leave to appeal and the Section 5 application by the Learned Advocate on record Mr. Mitra. It was again sent to the competent authority and after making necessary correction or modification the same was sent to the Advocate on record on 17.02.2022 which was filed on 22.03.2022 physically and the e-filing of the same was filed on 26.02.2022.

- 3.** Ld. Advocate, Mr. Anirban Mitra, appearing on behalf of the petitioner/Central Bureau of Investigation (hereinafter referred to as CBI) centered around his argument within the explanation mentioned above disclosed in the application for condonation of delay. Mr. Mitra has tried to make this court understand that before filing of the special leave petition it required approval of the highest authority and that was the reason of delay in filing the special leave petition to file appeal.

4. Mr. Mitra relied on a decision (***Central Bureau of Investigation Vs. Rabindranath Biswas and others***) passed by a Co-ordinate Bench in connection with CRMSPL 42 of 2022 wherein Hon'ble Co-ordinate Bench dealt with an application under Section 5 of the Limitation Act, 1963 for delay of 2 ½ years to special leave to appeal.
5. Mr. Mitra has further relied on a case of ***State of West Bengal Represented by the Secretary, Department of Finance, Government of West Bengal Vs. West Bengal Judicial Service Association*** reported in ***1990 2 CLJ 73***.
6. Ld. Advocate, Mr. Lal Mohan Hajra, appearing on behalf of the opposite party no. 1,2,3,5 & 6 has contended that explanation given in the application for condonation of delay cannot be taken into consideration in terms of delay of four years.
7. Mr. Hajra, in support of his argument, has relied on the following judgements:-
 - ***State of Uttar Pradesh & Ors. Vs. M/s Satish Chand Shivhare reported in 2022 live (SC) 430***
 - ***Central Bureau of Investigation Vs. Bimal Kumr Saha and another in CRMSPL 3 of 2019 passed by a coordinate bench of this court.***

8. Ld. Advocate, Mr. Satadru Lahiri appearing on behalf of opposite party No. 4 has submitted that all the explanation given in the petition for condonation of delay is nothing but a glaring example of official red tapism for which Hon'ble Apex Court repeatedly warned all the Government Institutions to remain cautions regarding period of limitation embedded in the statute to file appeals or applications.

9. Mr. Lahiri has refer to the following decisions of the Hon'ble Apex Court:-

- ***Union of India Vs Jitendra reported in (2021) 10 Supreme Court Cases 789***
- ***Union of India Vs. Central Tibetan School Administration reported in (2021) 11 Supreme Court cases 557***
- ***Commissioner of Customs, Chennai Vs. Volex Interconnect (India) Private Limited reported in (2022) 3 Supreme Court Cases 159***
- ***Postmaster General and others Vs Living Media India Limited and another reported in (2021) 3 Supreme Court Cases 563***

- 10.** Before parting with, Mr. Lahiri has submitted that all the officials took unlimited time for approval in spite of knowing sufficient period of limitation under Section 378 (5) of the Civil Procedure Code, given to the public servant to file special leave to appeal under Section 378(4) of the Code of Civil Procedure.
- 11.** Mr. Mitra on behalf of the C.B.I has drawn my attention to the gravity of the offence i.e. cheating of public money deposited in bank. I am in full agreement with Mr. Lahiri that offence alleged was grievous in nature and for that reason CBI ought to have been on alert mode in respect of extra period of limitation under the statute i.e. special leave to appeal within six (6) months from the date of delivery of judgment of acquittal under Section 378(4) & (5) of the Code of Civil Procedure unlike ordinary litigants. So far as explanation of delay is concerned Government agencies cannot be allowed further concession unlike ordinary litigants.
- 12.** Hon'ble Apex Court reiterated and cautioned the High Court not to condone the delay in a mechanical manner while deciding the issue relating to application filed under section 5 of the Limitation Act. Law of limitation may harshly affect a particular party but it has to be applied with all its rigour

when statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. Moreover, grounds of delay mentioned in the petition under Section 5 of the Limitation Act, are all about pushing of files from one authority to another authority and the rigmarole of procedures.

13. I am dealing with an application for condonation of delay for a period of 4 years and explanations given in the petition cannot be considered as reasonable in terms of innumerable decisions of the Hon'ble Apex Court.

14. In M/s. Satish Chand Shivhare (supra) Hon'ble Apex Court ruled as under:-

"17. The explanation as given in the affidavit in support of the application for condonation of delay filed by the Petitioners in the High Court does not make out sufficient cause for condonation of the inordinate delay of 337 days in filing the appeal 6 under Section 37 of the Arbitration and Conciliation Act. The law of limitation binds everybody including the Government. The usual explanation of red tapism, pushing of files and the rigmarole of procedures cannot be accepted as sufficient cause. The Government Departments are under an obligation to exercise due diligence to ensure that their right to initiate legal proceedings is not extinguished by operation of the law of limitation. A different yardstick for condonation of delay cannot be laid down because the government is involved.

18. As held by this Court in Basawaraj and Anr. v. Special Land Acquisition Officer¹ :

"9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no

more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See *Manindra Land and Building Corpn. Ltd. v. Bhutnath Banerjee* [AIR 1964 SC 1336], *Mata Din v. A. Narayanan* [(1969) 2 SCC 770 : AIR 1970 SC 1953], *Parimal v. Veena* [(2011) 3 SCC 545 : (2011) 2 SCC (Civ) 1 : AIR 2011 SC 1150] and *Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai* [(2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24 : AIR 2012 SC 1629] .)”

11. The expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide *Madanlal v. Shyamlal* [(2002) 1 SCC 535 : AIR 2002 SC 100] and *Ram Nath Sao v. Gobardhan Sao* [(2002) 3 SCC 195 : AIR 2002 SC 1201] .)

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute. 1 (2013) 14 SCC 81 7 ***

*** 15. The law on the issue can be summarised to the effect

that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

15. Jitendra (supra) ruled as under:-

“3. We have been repeatedly deprecating the practice of authorities coming before this Court after inordinate delays assuming as if the Law of Limitation does not apply to them. Repeatedly, reliance is placed on the judgments of vintage when technology was not easily available. No reference is made to the subsequent judgment in Postmaster General v. Living Media (India) Ltd. [Postmaster General v. Living Media (India) Ltd., (2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649] which has dealt with the issue that consideration of the ability of the Government to file appeal in time would have to be dealt with in the context of the technology now available and merely shuffling files from one table to the other would no more be a sufficient reason.

4. We have also categorised such cases as “certificate cases”. We have specified the object to file such cases to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, record that nothing could be done because the highest Court has dismissed the appeal. It is a completion of formality with endeavourer to save the skin of the officers who may be in default in following the appropriate legal process in time. The irony is that despite our repeated orders, very little is done at

least in taking action against officers concerned who sit on files and do nothing. The presumption is as if this Court will condone the delay for the asking. We refuse to follow such a course. [State of M.P. v. Bherulal [State of M.P. v. Bherulal, (2020) 10 SCC 654 : (2021) 1 SCC (Cri) 117 : (2021) 1 SCC (Civ) 101 : (2021) 1 SCC (L&S) 84] and Municipal Corpn. of Greater Mumbai v. Uday N. Murudkar [Municipal Corpn. of Greater Mumbai v. Uday N. Murudkar, (2021) 11 SCC 816 : 2020 SCC OnLine SC 914] .]

16. Central Tibetan Schools & Administration (supra)

laid down the following observation:-

“5. We have repeatedly been counselling through our orders various Government Departments, State Governments and other public authorities that they must learn to file appeals in time and set their house in order so far as the Legal Department is concerned, more so as technology assists them. This appears to be falling on deaf ears despite costs having been imposed in a number of matters with the direction to recover it from the officers responsible for the delay as we are of the view that these officers must be made accountable. It has not had any salutary effect and that the present matter should have been brought up, really takes the cake!

6. The aforesaid itself shows the casual manner in which the petitioner has approached this Court without any cogent or plausible ground for condonation of delay. In fact, other than the lethargy and incompetence of the petitioner, there is nothing which has been put on record. We have repeatedly discouraged State Governments and public authorities in adopting an approach that they can walk in to the Supreme Court as and when they please ignoring the period of limitation prescribed by the statutes, as if the Limitation statute does not apply to them. In this behalf, suffice to refer to our judgment in State of M.P. v. Bherulal [State of M.P. v. Bherulal, (2020) 10 SCC 654 : (2021) 1 SCC (Civ) 101 : (2021) 1 SCC (Cri) 117 : (2021) 1 SCC (L&S) 84] and State of Odisha v. Sunanda Mahakuda [State of Odisha v. Sunanda

*Mahakuda, (2021) 11 SCC 560]. The leeway which was given to the Government/public authorities on account of innate inefficiencies was the result of certain orders of this Court which came at a time when technology had not advanced and thus, greater indulgence was shown. This position is no more prevalent and the current legal position has been elucidated by the judgment of this Court in *Postmaster General v. Living Media (India) Ltd.* [*Postmaster General v. Living Media (India) Ltd.*, (2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649] Despite this, there seems to be a little change in the approach of the Government and public authorities.”*

17. Commissioner of Customs, Chennai (supra) ruled as under:-

“ 2. This is one more case of what we have already categorized as “ certificate cases” and we do not delve further, as the purpose seems just to bring the matter to the Courts to put a closure to the same without giving any cogent explanation for condonation of delay in terms of *Postmaster General V. Living Media (India) Ltd* (2012) 3 SCC 563.”

18. In *Postmaster General* (supra) Hon’ble Apex Court laid down the following guidelines:-

“**27.** 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.

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 bona fides, 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.

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

- 19.** The Matter of condonation of delay has been expounded with clarity in above ratios and requires no other exemplification. I am in respectful agreement with the above extracted observations. The Circumstances in the present case are squarely covered by the observation made in ***M/s. Satish Chand Shivhare*** (supra), ***Jitendra*** (supra), ***Central Tibetan Schools & Administration*** (supra), ***Commissioner of Customs, Chennai*** (supra) and ***Postmaster General*** (supra).

20. In terms of aforesaid legal position, I am sorry to opine that the petition for condonation of delay deserves no consideration and accordingly dismissed. Consequently, special leave to appeal also stands dismissed.

21. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]