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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **CRL.L.P. 54/2019 & CRL.M.A. 806/2019**

CENTRAL BUREAU OF INVESTIGATION ..... Petitioner

Through: Mr. Prasanta Varma, SPP, CBI with Mr. Pankaj Kumar, Ms. Pragya Verma and Mr. Rakesh Kumar Palo, Advs.

versus

RAM NIWAS CHOWDHURY & ANR ..... Respondents

Through: Mr. Gurbaksh Singh, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **27.05.2024**

1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 (‘**CrPC**’) seeking leave to appeal against the common judgment dated 27.03.2017 (hereafter ‘**impugned judgment**’), in Criminal Appeal Nos. 272/2016 and 300/2016, whereby the learned Appellate Court acquitted the respondents of the offences under Sections 419/420/467/468/471 of the Indian Penal Code, 1860 (‘**IPC**’).

2. The petitioner has also filed an application, that is, CRL.M.A. 806/2019, under Section 5 of the Limitation Act, 1963 read with Section 482 of the CrPC seeking condonation of delay of 172 days in filing the present petition.

3. The learned Appellate Court, by the impugned judgment, had allowed the respective appeals filed by the respondents against the judgment of conviction dated 03.08.2016 and order on sentence dated 24.08.2016, passed by the learned Trial Court.

4. The brief facts of the case are as under:

4.1. One Purnima Dutta, proprietor of M/s. Piyali Films entered into a contract for telecasting a national award winning Bengali film, namely, "Hatay Bazaray" (hereafter '**the movie**'), at Delhi Doordarshan Kendra (DD), New Delhi.

4.2. It is the case of the prosecution that the said movie was telecast on 24.11.1991 and a cheque dated 06.01.1992 of ₹4,77,750/- was issued in favour of M/s. Piyali Films. The said cheque was dispatched to M/s. Piyali Films, Rash Behari Avenue, Calcutta from the Parliament Street Post Officer, however, the same was not received by the addressee and allegedly fraudulently encashed by the accused persons.

4.3. During investigation, it was found that co-accused D.K.Chakraborty had tasked Respondent No.1, who was employed as a clerk in Railways at Calcutta, to look after his interest in Calcutta as he was himself residing in Delhi.

4.4. It is alleged that in the year 1991, co-accused D.K.Chakraborty wanted to purchase the movie and he had sent a draft of ₹2,00,000/- and ₹25,000/- in cash through Respondent No.2 (business partner of co-accused D.K.Chakraborty) and Respondent No.1 to Mrs. Purnima Dutta. The negotiations were not fruitful and the drafts were returned

4.5. It is alleged that co-accused D.K.Chakraborty deputed Respondent No.1 to negotiate for telecasting the movie on Doordarshan Kendra. An understanding was reached that M/s. Piyali Films would receive 2/3rd of the royalty amount and 1/3rd will go to Ms. Ambika Chitram (daughter of Respondent No.1), proprietor of M/s Ambika Chitram, and all the liason work was to be done by M/s. Ambika Chitram.

4.6. It is alleged that co-accused D.K.Charaborty intercepted the cheque from the post office in connivance of the accused persons. It is alleged that the dak was received from Doordarshan

Kendra by the post office, however, it did not reach Calcutta.

4.7. It is alleged that the accused persons had encashed the concerned cheque by opening a fictitious account at United Bank of India, Kamla Nagar Branch in the name of Chinmoy Mukherjee, who was falsely introduced as the proprietor of M/s. Piyali Films. The account was opened by Respondent No.2, at the instance of co-accused D.K.Chakraborty and Respondent No.1. It is alleged that Respondent No.2 was introduced as Chinmoy Mukherjee to co-accused Rakesh Mittal by co-accused D.K.Chakraborty.

4.8. It is alleged that all the accused persons visited the Bank Branch on 09.01.1992 for opening the said bank account. Respondent No.2 was introduced by co-accused Rakesh Mittal as Chinmoy Mukherjee at the Bank. It is alleged that the amount of ₹500/- for opening the account was paid by co-accused Rakesh Mittal and the pay-in-slip was also in his handwriting.

4.9. It is alleged that co-accused D.K.Chakraborty paid all the expenses for the stay of Respondent No.2 and co-accused Rakesh Mittal in the hotel.

4.10. Co-accused Rakesh Mittal expired during the trial.

4.11. The prosecution examined 29 witnesses.

4.12. The learned Trial convicted the accused persons for the offences under Sections 419/420/467/468/471 read with Section 120B/34 of the IPC and for Section 120B of the IPC also.

4.13. Thereafter, co-accused D.K.Charaborty also expired. The remaining accused persons, that is, the respondents, preferred separate appeals before the learned Appellate Court.

4.14. The learned ASJ, by the impugned judgment, acquitted the respondents in the present matter.

5. The impugned judgment dated 27.03.2017 is challenged by

CBI belatedly on 22.12.2018.

6. At the outset, it is relevant to note that this Court, by order dated 04.04.2019, had issued notice to all the respondents on the main petition as well as on the application seeking condonation of delay. Fresh notices were directed to be served on Respondent No.2 on multiple occasions as service report was not received. Court notices were also issued to the respondents.

7. The learned counsel for Respondent No.2 is present today before this Court and vehemently contests the application seeking condonation of delay.

8. It is pointed out that two of the accused persons have already died during the trial.

9. Even though, the application erroneously mentions delay of 172 days, but the delay is of more than one year when the time is calculated. Clearly, there is an inordinate delay in filing the present petition.

10. It is well-settled that each day of the delay is required to be explained. In the present case, no sufficient reasons are mentioned in the application which would entitle the petitioner for condonation of delay. Standard explanation is pleaded in the application that the delay was not deliberate and was caused due to procedural requirements that involve approvals from different departments and officials at various levels.

11. The relevant paragraphs of the application seeking condonation of delay are set out below:

> *"2. That on receipt of the Judgment of the Ld. Special Judge, it was considered in the CBI at various levels and the opinion of the DoP was received on 25.07.2017 and it was found that the Ld. Special Judge has committed grave error of law and also failed to appreciate the material evidence in proper prospective.*
> *3. That after receipt of the approval from Director, CBI, the counsel was engaged in the matter and papers for drafting of petition were provided to the counsel and the matter was*

discussed.
4. That, thereafter, the appeal has been finalized and being filed through the counsel.
5. That the procedural requirement to comply with the statutory requirement involves approvals from different departments and officials at various levels and thus there has been delay of 172 days in preferring the revision. The bonafide and genuine reasons for the delay are enumerated as under:

NO.	***DETAILS***	***DATES***
1.	*Impugned judgment passed*	*27.03.2017*
2.	*Certified copy applied*	*31.03.2017*
3.	*Certified copy received*	*06.04.2017*
4.	*Case processed in branch office*	*21.04.2017*
5.	*Case forwarded to Head Office for its opinion*	*04.07.2017*
6.	*Head office order recommending filing of petition*	*15.07.2017*
7.	*Case sent to DoPT*	*08.08.2017*
8.	*Decision taken by DoPT to file Petition*	*25.10.2018*
9.	*Decision of DoPT received in CBI office*	*01.11.2018*
10.	*Upon legal vetting and final approval filed*	*22.12.2018*

6. That the delay in filing is neither intentional nor deliberate but due to the facts stated in this application and an affidavit in support of the present application is being filed alongwith it."

12. The Hon'ble Apex Court has frowned upon following of such practices by the Government departments. The Hon'ble Apex Court, in the case of ***Postmaster General v. Living Media India Ltd.* : (2012) 3 SCC 563**, had held that the Government cannot claim to have a separate period of limitation when the Department is possessed with competent persons familiar with court proceedings. The delay cannot be condoned mechanically merely because the Government or a wing of the Government is a party before the Court. The Hon'ble Apex Court had rejected the claim on account of impersonal machinery and bureaucratic methodology of making several notes in view of the modern technologies being used and available.

13. The Hon'ble Supreme Court in the case of ***State of M.P. v. Bherulal*** **: (2020) 10 SCC** 654, while observing the irony that no action is taken against the officers who sit on files and do nothing under a presumption that the court would condone the delay in routine, held as under:

> *"6. We are also of the view that the aforesaid approach is being adopted in what we have categorised earlier as "certificate cases". The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the officer concerned responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straightaway the counsel appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation."*

14. Therefore, unless a reasonable and acceptable explanation for the delay is provided, the same cannot be accepted. As held by the Hon'ble Apex Court, the Government departments are under such obligation to ensure that they perform their duties with diligence and commitment.

15. In the present case, no cogent reasons have been given for the Court to accept that the petitioner was prevented from filing the petition within the period of limitation. Lackadaisical attitude of officials and inefficiency of the State mechanism alone cannot be deemed to be sufficient reason to warrant condonation of delay. As noted above, more than one year, that is, 15.07.2017 to 08.08.2017, was taken to send the file to DoPT. No explanation

has been provided for the delay.

16. Insofar as the merits of the case are concerned, it is relevant to note that two of the accused persons have already expired.

17. Respondent No.2, before the learned Appellate Court, contested that he had never gone to the concerned Bank nor opened any account as alleged. It was submitted that Respondent No.2 had furnished no document to open any bank account and the same was opened by co-accused Rakesh Mittal.

18. In his statement under Section 313 of the CrPC, Respondent No.2 denied all the allegations. He stated that he did not know about the opening of the bank account. He stated that on 07.01.1992, co-accused D.K.Chakraborty gave him a proposal to work in a film in Delhi. Thereafter, he reached Delhi on 09.01.1992 through flight. He stated that he was asked to change his name to Chinmoy Mukherjee in line with famous celebrities. He stated that while he signed certain documents, he visited no bank. He denied knowing about the cheque being stolen.

19. It is trite law that this Court must exercise caution and should only interfere in an appeal against acquittal where there are substantial and compelling reasons to do so. The Hon'ble Apex Court in the case of ***Babu Sahebagouda Rudragoudar and Others v. State of Karnataka*** **: 2024 INSC 320** discussed the scope of interference by an Appellate Court for reversing the judgment of acquittal. The relevant portion of the judgment is reproduced hereunder:

> "***38.*** *Further, in the case of* ***H.D. Sundara & Ors. v. State of Karnataka*** *[(2023) 9 SCC 581] this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -*
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> > *"8.1. The acquittal of the accused further strengthens the presumption of innocence;*

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. ***If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible****; and*

8.5. ***The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible****."*

39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

40. *The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court."*

20. The learned Appellate Court has passed a well-reasoned order after appreciating the evidence. It was observed that the prosecution had been unable to prove the substantial charges of cheating and the evidence of the handwriting expert could not be looked into as the written specimen was not taken by the IO with the permission of the concerned Magistrate.

21. Among the factors that weighed the learned Appellate Court in acquitting the respondents was that there was no inducement by the respondents to make out a case for cheating.

Even the statement of the complainant was silent as to inducement by the respondents. The learned Appellate Court rightly observed that the present case centered on cheating done by fraudulent encashment of cheque.

22. The crucial issue of how co-accused D.K.Charaborty somehow managed to intercept the cheque without active aid from the officers of the post office was not properly looked into. It was argued that the cheque was intercepted by co-accused D.K.Charaborty merely on the basis of the statement of the other accused persons. Allegations though are made but no investigation was done in regard to opening of the Bank Account. Admittedly, investigation related to the stage after encashment of the cheque. The learned Appellate Court took note of other deficiencies in the investigation wherein Mr. Nem Chand (PW13), who was working in the registry branch of the Parliament Street Post Office, explicitly admitted that no person from post office had stated that co-accused D.K.Charaborty had stolen the cheque. This Court finds no infirmity in the finding that the investigation was lax on this aspect.

23. Another factor that weighed into the Appellate Court's decision of acquittal was the fact that the prosecution had heavily relied on the testimony of the CFSL Expert (examined as PW24). It was noted that Respondent No.1 has not filed any document in relation to opening of the bank account and his handwriting and signature specimen were not obtained in accordance with law.

24. The learned Appellate Court observed that where the specimen writings are not obtained under direction of the designated Court, the same could not be used during the course of the trial. It was also noted that the credibility of the specimens was affected by the fact that the same were taken by the IO

wherein there was a possibility of fabrication of evidence. Fallibility of such evidence has been widely accepted. That, coupled with non-observation of proper procedure in obtaining samples, casts a doubt over the evidence.

25. The learned Appellate Court also noted that the Deputy Manager of the Bank (PW3) was not questioned as to whether it was Respondent No.2 who had appeared before him to sign the documents. PW4 (Manager in the Bank) also contradicted the IO's version that all accused persons had visited the bank and stated that only co-accused Rakesh Mittal had brought the person who was presenting himself as the proprietor of M/s. Piyali Films, namely, Chinmoy Mukherjee, to the Bank. PW4 was not asked to identify Respondent No.2 either.

26. The only allegations in regard to the fictitious account are that Respondent No.1 allegedly accompanied the other accused persons to the Bank for opening the account. The same is clearly negated by the testimony of PW4. Furthermore, as far as the allegation of Respondent No.2 having impersonated as Chinmoy Mukherjee is concerned, having agreed with the learned Appellate Court on the question of the handwriting samples, there is no other cogent evidence that completes the chain of circumstances to implicate Respondent No.2 in the said manner.

27. The learned Appellate Court observed that Respondent No.1 did not confess his involvement in the crime and that there must be some evidence to back the confessional statement.

28. This Court finds no infirmity in the observation of the learned Appellate Court that the situation lends credence to the contention that Respondent No.2 never visited the Bank when no one has identified him as the person who visited the Bank.

29. In the present case, under peculiar circumstances, a cheque

for an amount of ₹4,77,750/- was somehow stolen from a Post Office and allegedly encashed through a fictitious account opened in the name of Chinmoy Mukherjee, who was falsely introduced as the proprietor of the addressee firm. Two of the accused persons, one of whom was purportedly responsible for stealing the check (co-accused D.K.Chakraborty) and the other who played an active part in opening of the fictitious bank account by furnishing his residence details and paying the amount of ₹500/- (co-accused Rakesh), have already expired. The learned Appellate Court has taken note of the infirmities in the investigation and granted benefit of the doubt cast on the credibility of the handwriting evidence due to non-observation of the procedure under law.

30. As discussed above, the scope of interference in an appeal against acquittal is limited. It is settled law that if two views are possible on the evidence adduced in a case, one pointing to the guilt of the accused and the other to the innocence, the view favourable to the accused should be adopted. The order of acquittal ought not to be interfered with unless there are compelling and substantial reasons for doing so. It cannot be said that the learned Appellate Court ignored the admissible evidence which led to acquittal of the respondents. The evidence cannot be re-appreciated in the manner as sought to be argued by the petitioner. Even otherwise, when the alleged offence dates back to more than three decades and two of the main accused persons having already expired, this Court finds no compelling reasons to interfere with the impugned order.

31. In view of the aforesaid discussion, this Court finds no credible ground to accede to the petitioner's request to condone the delay or to grant leave to appeal in the present case.

32. The leave petition along with the pending application for condonation of delay are dismissed in the aforesaid terms.

AMIT MAHAJAN, J

MAY 27, 2024