

Form No. J (2)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**MAT 1981 of 2022
IA NO: CAN/1/2022
CAN/2/2024**

State of West Bengal & Ors.

vs.

Prakash Sinha

For the Appellants : Mr. Sudip Ghosh, Advocate
(*Spl. P.P. C.I.D.*)
Mr. Apurba Kumar Datta, Advocate

For the Respondent : Mr. Sandipan Ganguly, Senior Advocate
Mr. Somopriyo Chowdhury, Advocate
Mr. Soumabha Ghosh, Advocate
Mr. Deepan Kumar Sarkar, Advocate
Mr. Aayush Lakhota, Advocate
Mr. Matri Prasad Das, Advocate

Heard on : 13.01.2025

Judgment on : 13.01.2025

DEBANGSU BASAK, J.:-

1. CAN/2/2024 is an application for condonation of delay.
2. Affidavits filed in Court be taken on record.

3. Appeal is directed against the order dated December 1, 2022 passed in WPA 11402 of 2020 with CAN 1 of 2022.
4. Leave to file the appeal without the certified copy was granted on December 12, 2022.
5. Appeal without the certified copy was within time.
6. However, leave to file the appeal without certified copy of the impugned order cannot be equated with the requirement to file the certified copy of the impugned order being dispensed with. Leave is not synonymous with dispensation to file the certified copy.
7. Appellants filed the certified copy of the impugned order in the department on December 2, 2024.
8. Department, therefore, reported a delay of 702 days.
9. Learned advocate appearing for the appellants submits that, the appellants applied for certified copy of the impugned order on December 6, 2022. Clerk of the learned advocate for the appellants collected the certified copy on January 3, 2023.
10. Such certified copy was misplaced. A fresh application for certified copy was made on November 27, 2024. Certified copy pursuant to the fresh application was obtained and filed on December 22, 2024.
11. Learned Senior Advocate appearing for the private respondent submits that, there is no explanation for the delay of 702 days. He relies upon

(2012) 3 Supreme Court Cases 563 (Postmaster General & Others

versus Living Media India Limited & Another and ***(2024) 10 Supreme Court Cases 790 (Harsh Bhuwalka & Others versus Sanjay Kumar Bajoria)*** and submits that, since the appellants did not explain the delay sufficiently, the application for condonation of delay should not be allowed.

12. As noted above, impugned order is dated December 1, 2022. Appeal against such impugned order was filed after obtaining leave to file the same without the certified copy. Such leave was granted on December 12, 2022.
13. Again as noted above, leave to file without the certified copy cannot be construed as a dispensation to file the certified copy. Appellants applied for certified copy of the impugned order on December 6, 2022 and obtained the same on January 3, 2023. Clerk of the learned advocate for the appellants who obtained the certified copy of the impugned order from the department misplaced same. On discovery of such fact, fresh application for certified copy was made on December 27, 2024 and after obtaining the certified copy the same was filed on December 2, 2024.
14. Explanation put forward is plausible. Courts are concerned more with the quality of explanation rather than the quantum of the delay.
15. In ***Harsh Bhuwalka & Ors. (Supra)*** practice directions were issued regarding Special Leave Petition filed without the certified copy of the order impugned. It considered the provisions of the Rules of the Supreme

Court relating to filing of Special Leave Petitions and issued practice direction with regard thereto.

16. ***Postmaster General & Ors. (Supra)*** is of the view that, law of limitation binds everybody equally including Government. Absence of diligence by the Government in prosecuting matter should not be countenance unless, the delay caused is adequately explained.
17. In the facts and circumstances of the present case, we are not in a position to return a finding on the basis of the pleadings that delay caused is not explained.
18. In such circumstances, we allow CAN/2/2024.
19. Delay in making and filing the appeal is condoned.
20. By consent of the appearing parties, we take up the appeal for final disposal.
21. The impugned order dated December 1, 2022 is an interim order in a writ petition. Court is informed that, the writ petition is still pending.
22. By the impugned order, learned Single Judge, directed stay of further proceedings of investigation carried out with regard to FIR No. 258 of 2020 dated August 14, 2020.
23. FIR No. 258 of 2020 was registered pursuant to an order passed by the Jurisdictional Court under Section 156(3) of the Criminal Procedure Code.
24. The de facto complainant approached the Jurisdictional Court complaining that, de facto complainant received to messages from the writ

petitioner allegedly containing photos of documents bearing altered signature of the de facto complainant.

25. Private respondent as the writ petitioner received notices purported to be under Sections 91 and 160 of the Criminal Procedure Code. Private respondent assailed such two notices in the writ petition being WPA 11402 of 2020 in which the impugned order was passed.
26. Learned Single Judge, in the same writ petition, by an earlier order dated September 30, 2022 permitted the investigations to continue but no coercive step to be taken against the writ petitioner. The writ petitioner was directed to cooperate with the investigation.
27. Learned Single Judge proceeded on the basis that the investigation of the police was proceeding heedlessly held that the Court was with no other option than to stay the further proceedings of the investigation.
28. Staying of investigation of the criminal case will not be in public interest. One person came to the Court by way of writ petition in the criminal investigation. Staying the entirety of the investigation on the basis of a writ petition of one person may not subserve the interest of justice.
29. In such circumstances, we modify the impugned order by permitting the investigations to continue. Conclusion of the investigation is necessary so that finality achieved in such respect. Investigations of FIR No. 258 of 2020 dated August 14, 2020, will continue in accordance with law. The

Investigating Authority will not take any coercive step as against the writ petitioner without prior leave of the Writ Court.

30. For the one month following today the writ petitioner will report before the Investigating Authority once a week. Thereafter, it would be open to the Investigating Authority to apply for further attendance of the writ petitioner, if required, before the Writ Court.
31. **MAT 1981 of 2022** along with CAN/1/2022 are **disposed of** accordingly.
32. It is clarified that, the observations made in this order are for the purpose of disposal of the appeal. None of the parties will not be prejudiced by such observations. Writ Court will proceed to hear and dispose of the writ petition in accordance with law as expeditiously as possible without being influenced by any of the observation made by us in this order.

(Debangsu Basak, J.)

33. I agree.

(Md. Shabbar Rashidi, J.)

CHC