

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

IA No. CRAN 1 of 2022

In

CRMSPL/4/2022

Central Bureau of Investigation

Vs.

Sanjib Halder

For the Appellant:

Mr. Phiroze Edulji, Adv.,

Mr. Samrat Goswami, Adv.,

Ms. Samira Grewal, Adv.

For the Respondent:

Mr. Ayan Bhattacharyya, Adv.,

Mr. Aditya Ratan Tiwary. Adv.

Heard on: 25.04.2022, 04.05.2022, 17.05.2022

Judgment on: 23.06.2022.

BIBEK CHAUDHURI, J. : -

1. Affidavit of service be kept with the record.
2. This is an application under Section 5 of the Limitation Act filed by the petitioner praying for condonation of delay in filing the application for special leave to appeal against an order of acquittal passed in Special Case No.42 of 2011 by the learned Judge, Special CBI Court No.2 Kolkata

acquitting the opposite party of the charge under Section 7 read with Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act.

3. It is submitted by the petitioner that Special Case No.42 of 2011 was disposed of by the court below regarding an order of acquittal of the charge under Section 7 read with Section 13(2) and 13(1)(d) of the Prevention of Corruption Act vide judgment and order dated 29th March, 2019. The petitioner being the Central Investigating Agency applied for certified copy of the judgment on the very date of delivery of judgment and it was delivered to it on 10th April, 2019. CBI received comments of the learned Senior Public Prosecutor on 2nd May, 2019 and file was placed before the Superintendent of Police, CBI for his comments. Such comment was received on 8th May, 2021. The Head of the Branch and Deputy Legal Advisor, CBI gave their comments on 21st August, 2019 and 28th August, 2019 respectively. Thereafter by an order dated 6th September, 2019 the Joint Director, CBI Kolkata Zone made a recommendation for filing an appeal against the impugned judgment. The file was sent to the Head Office of CBI at New Delhi on 6th September, 2019. Upon receipt of the file, the Director of Prosecution, CBI sought for the views of Additional Legal Advisor (Legal) on 9th September, 2019. The Additional Legal Advisor submitted his report on 3rd October, 2019 with a recommendation to file appeal against the impugned judgment and order of acquittal on 3rd October, 2019 and marked the file to the Joint Director and Head of the Zone, Kolkata on 4th October, 2019. The Additional Director, CBI sought for the views of the Director of Prosecution and the file was sent to him on

16th October, 2019. The Director of Prosecution submitted his comments on 14th February, 2020 recommending for filing appeal against the impugned judgment and the file was marked to the Additional Director, CBI. The Additional Director, CBI further marked the file to the Director, CBI on 19th February, 2020. The Director, CBI accorded approval to the recommendation for filing appeal against the impugned judgment and order on 20th February, 2020. The file was received back by CBI, ACB, Kolkata on 24th February, 2020. Pursuant to receipt of the approval again the file was moved through different hierarchy of the CBI on the ground that the period of limitation has expired in the mean time and the appeal ought to be filed with an application for condonation of delay. Finally the private application for filing appeal along with the private application under Section 5 of the Limitation Act for condonation of delay was forwarded to the learned Additional Solicitor General for CBI, Kolkata on 31st August, 2021. In such event there has been delay of 313 days in filing the instant appeal.

4. It is contended on behalf of the CBI that the CBI and its various departments were always keen to file an appeal within the period of limitation but there was considerable amount of delay due to the procedural latches to be carried out by the CBI for filing an appeal. Such latches were not intentional and accordingly the delay may be condoned.

5. It appears from the record that the application for special leave to appeal was filed on 9th February, 2022. The application under Section 5 of the Limitation Act was filed on 22nd February, 2022.

6. It is submitted by the learned Advocate for the petitioner that the impugned judgment was passed on 29th March, 2019. The application for certified copy of the judgment was made on the same date of delivery of judgment. The certified copy was received on 10th April, 2019. The appeal ought to be filed within 90 days i.e., on or before 9th July, 2019. However, there was delay of 301 days and the application for special leave to appeal was filed on 9th February, 2022.

7. It is also submitted by the learned Advocate for the CBI that due to Covid Pandemic the petitioner is entitled to have delay in filing appeal condoned as per order of the Hon'ble Supreme Court passed in MA 21 of 2021. The period of limitation has been extended up to 28th February, 2022.

8. Mr. Ayan Bhattacharjee, learned Advocate for the opposite party, on the other hand submits that delay was actually of 959 days. The petitioner ought to have filed the application for special leave to appeal on or before 9th July, 2019. Limitation starts from 10th July, 2019 when there was no Covid pandemic. When limitation starts running, it is submitted by the learned Advocate for the opposite party, it will not stop running due to any future disability. Thus, it is contended by the learned Advocate for the opposite party that the petitioner is required to explain delay of 959 days in preferring the application for special leave to appeal.

9. On factual score it is submitted that the alleged occurrence took place in the year 2005. It is alleged that the opposite party took illegal gratification of a sum of Rs.7,000/-. Order of acquittal was passed on 29th

March, 2019. Thus, the learned Counsel for the opposite party has raised a question that for such offence the accused/opposite party should not be prosecuted for an unlimited period of time.

10. For timely filing of appeal, the CBI has made out detailed provision in Rule 21.9 of the CBI (Crime Manual, 2020). The said provision is reproduced below:-

21.9 a) To avoid delay and ensure filing of appeals/revisions in the Appellate Courts within the limitation period, the guidelines/timeframe laid down vide PD Circular No.10/2020 dated 04.03.2020 for analysing the judgement/order should be complied with by all CBI officers.

b) After the approval to file appeal in a matter is received, the proposal, complete in all respects, shall be sent to DoPT within three working days.

c) The Head of Branch should ensure that the proposal sent to DoPT is pursued regularly through an official of the Branch and the status/progress of the matter is recorded in the concerned crime file. Once the proposal is forwarded by the DoPT to the Ministry of Law, the status would be informed to DLA (HQ) in the Directorate of Prosecution so that the DLA (HQ) follows up on day to day basis. The efforts made in follow up must be duly reported by designated official in the crime file and a chronology prepared in file. Once the recommendation of the Ministry of Law is received in DoPT, the Head of Branch would follow it up to obtain the order from DoPT.

Documents required with the proposal for filing SLP/Appeal

d) Every proposal for filing SLP in the Supreme Court or Appeal against acquittal to the High Court or the Sessions Court must contain legible copies of the following documents while being sent to the Ministry:-

i) Legible copy of the judgment/order. In case the impugned order is of the appellate Court then copy of the judgment/order of the trial Court must also be enclosed;

ii) Copy of the charge sheet;

iii) Copy of the charge framed by the trial Court;

iv) Copies of the depositions of the witnesses;

v) Copies of crucial and material documents;

vi) Statement of the accused recorded under section 313 CrPC.

e) After the receipt of final orders in Branch from the competent authority of Central Govt, the filing of the relevant appeal/revision must not take more than ten working days.

Enquiry into reasons for delay

f) In all cases where there is inordinate delay beyond the statutory period in filing appeals/revisions by CBI Branch, the Head of Zone must enquire into the reasons for the delay and submit report, with his recommendation on the responsibility for the delay, to the competent authority.

11. Learned Advocate for the opposite party, on the other hand, submits that the petitioner has failed to explain 959 days delay in filing the application for special leave to appeal. He also refers to an unreported decision of this Court in CRAN 1 of 2019 in CRMSPL 3 of 2019 where this Court held that the Government or a Government Agency is not a privileged litigant. The Limitation Act is applicable to the Government Agency in the same manner as that of an ordinary litigant. Relying on the

principle laid down in **Office of the Chief Post Master General & Ors. Vs. Living Media India Ltd & Anr.** reported in **AIR 2012 SC 1506** and other decisions, this Court rejected an application for condonation of delay under Section 5 of the Limitation Act.

12. In the instant case, according to the learned Advocate for the opposite party, the petitioner failed to explain the delay in filing appeal properly only the ground that a considerable time was consumed in getting the final direction from the higher officials of CBI to prefer an appeal against the impugned judgment, it is stated by the petitioner that there was delay in lodging the application for special leave to appeal. According to the learned Advocate for the opposite party, this is not the ground for condonation of delay. The petitioner ought to have mentioned as to why there was delay in the office of the CBI at Kolkata and Delhi after obtaining the certified copy of the impugned judgment. Since no explanation is set forth by the petitioner, the delay of 959 days cannot be condoned.

13. Having heard the learned Counsels for the parties and on careful perusal of the petition, affidavit-in-opposition, affidavit-in-reply and the judgments passed by this Court as well as the Hon'ble Supreme Court I like to record at the outset that Clause 21.9 of CBI (Crime Manual, 2020) makes a detailed provision to avoid delay and ensure filing of appeals/revisions in the Appellate Court within the limitation period. Specific timeline was fixed for each of the officers of the CBI within which the order is to be passed and then sent to the next officer in the

hierarchy. Undoubtedly the officers of CBI sitting in higher echelon of the department have failed to follow the guideline. Therefore, delay was caused in preferring the appeal.

14. Now comes the question as to whether the said delay should be condoned or not. It is found that the conduct of the CBI Officials in the local office was prompt. On the next date of the delivery of the judgment CBI prayed for certified copy of the order. Then the opinion of the local office was obtained and it was sent to Delhi. Delay was caused by Delhi Office. I am in agreement with Mr. Mitra that if the CBI was not given an opportunity to test the factual as well as legal aspect involved in the instant appeal, the accused persons in a case of committing fraud of huge sum of money would be scot-free for the negligent and callous approach of the higher officers of the CBI.

15. In this regard I like to point out that Chapter 21 of CBI (Crime Manual, 2020) is a manual prepared by the CBI without being ratified by the Parliament. This is absolutely an internal administrative circular of the CBI.

16. In State of Jharkhand through S.P., CBI vs. Lalu Prasad alias Lalu Prasad Yadav reported in 2017 CRI. L.J. 4008, the Hon'ble Supreme Court was pleased to make the following observation while condoning the delay in paragraph Nos. 51 to 54:-

“51. Coming to the question of delay, we find that there is a delay of 113, 157 and 222 days in filing the respective appeals by the CBI. Applications have been filed for condonation of

delay on account of the departmental, administrative procedures involved in for filing the special leave petition. It is submitted that unlike the private litigant the matters relating to the Government are required to be considered at various levels and then only a decision is taken to file special leave petition. The process of referring the particular file from one department to another is a time consuming process and decisions have to be taken collectively.

52. It was submitted by Shri Ram Jethmalani, learned senior counsel appearing on behalf of the respondents that delay of 157 days has not been satisfactorily explained. The averments made in the applications seeking condonation of delay are based upon earlier authorities which no longer can be said to be good law. He has relied upon the decisions in Postmaster General & Ors. v. Living Media India Ltd. & Anr. (2012) 3 SCC 503: (AIR 2012 SC 1506) and State of U.P. Thr. Exe. Engineer v. Amar Nath Yadav (2014) 2 SCC 422: (AIR 2014 SC (supp) 1917). His submission is that Law of Limitation binds every body equaling including the Government and defense by the Government of impersonal 7 machinery and inherited bureaucratic methodology cannot be accepted in view of the modern technology being used and available; moreso in the light of the aforesaid decisions. Delay in moving files from one department to another is not sufficient explanation for condoning abnormal delay. Condonation of delay is an exception and should not be used as an anticipated benefit for the Government department. The case was investigated by CBI from beginning to end and the CBI Manual provides mechanism for filing appeal expeditiously. The CBI was bound by its Manual and in violation of the provisions contained in

Mannual without sufficient explanation, the delay cannot be condoned.

53. *Reliance was also placed on Ajit Singh Thakur & Anr. v. State of Gujarat, 1981 (1) SCC 495: (AIR 1981 SC 733), which has been approved in Pundlik Jalam Patil (D) by Lrs. v. Exe. Engg. Jalgaon Medium Project & Anr. (2008) 17 SCC 448: (AIR 2008 SC (Supp) 1025) that as per the conduct of the appellants they are not entitled for condonation of delay, moreso, in view of the decision in Binod Bihari Singh v. Union of India (1993) 1 SCC 572: (AIR 1993 SC 1245) as there was suppression as to when the judgment was applied or received. CBI Mannual has a statutory force as held in Vineet Narain & Ors. v. Union of India & Anr. (1998) 1 SCC 226: (AIR 1998 SC 889) and the guidelines as to time frame should have been strictly adhered to as observed by this Court.*

54. *On the other hand, learned Solicitor General has submitted that delay deserves to be condoned. He has relied upon the decision of this Court in Japani Sahoo v. Chandra Sekhar Mohanty (2007) 7 SCC 394: (AIR 2007SC 2762) in which it has been observed that in serious offences, prosecution is done by the State and the court of law should not throw away prosecution solely on the ground of delay. Mere delay in approaching a court of law would not by itself afford a ground for dismissing the case. He has also referred to Sajjan Kumar v. Union of India (2010) 9 SCC 368: (2011 AIR SCW 3730) to contend that a prosecution should not be quashed merely on the ground of delay. The aforesaid decisions cited of Japani Sahoo (AIR 2007 SC 2762) and Sajjan Kumar (2011 AIR SCW 3730) (supra) are with respect to the delay in institution of the case not with respect to sufficient cause in filing of appeals.*

However, reliance on the State of Tamil Nadu v. M. Suresh Rajan (2014) 11 SCC 709: (AIR 2014 SC (supp) 1982 is apt in which the time consumed in taking opinion on change of Government was held to be sufficient cause so as to condone the delay. Reliance has also been placed on Indian Oil Corporation Ltd. & Ors. v. Subrata Borah Chowlek, etc. (2010) 14 SCC 419: (AIR 2016 SC (Supp) 446) in which there was a delay in filing the appeals in which this Court has observed that Section 5 owes no distinction between State and citizen. The Court has to ensure that owing to some delay on part of the machinery, miscarriage of justice should not take place. It is also contended that the power under Section 5 of the Limitation Act should be exercised to advance substantial justice by placing reliance on State of Nagaland v. Lipok AO & Ors. (2005) 3 SCC 752: (AIR 2005 SC 2191).”

17. With the above observation the Hon'ble Supreme Court condoned the delay in filing the special leave to appeal before the Hon'ble Supreme Court. The above observation made by the Hon'ble Supreme Court is abtly applicable in the instant case. Therefore, this Court condones the delay in filing the instant appeal. The application under Section 5 of the Limitation Act is, thus, allowed.

18. Any observation made in this order with regard to factual aspect of the case or the importance and gravity of 9 the alleged offence is absolutely tentative and such observation will not affect the Appellate Court's right to dispose of the appeal on the basis of the fact arising out of the evidence adduced by the witnesses and the law involved in the subject.

19. In paragraph 52 of the aforesaid report it is observed by the Hon'ble Supreme Court that the C.B.I. Manual provides the mechanism for filing appeal expeditiously. The CBI was bound by its Manual and in violation of the provision contained in the Manual without sufficient explanation the delay cannot be condoned. It is further observed in paragraph 53 of the aforesaid report that CBI Manual has statutory force as held in Vineet Narain & Ors. vs. Union of India & Anr. (1998) 1 SCC 226 and the guidelines as to time frame should have been strictly adhered to.

20. In spite of such direction by the Hon'ble Apex Court to the CBI, the said agency always files appeals after expiry of the period of limitation and inordinate delay is caused for filing appeals specially against the order of acquittal passed by the trial Court.

Sub-section (2) of Section 378 stipulates –

“378. Appeal in case of acquittal.- (1).....

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, [the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal –

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and nonbailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High

Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.”

21. The same provision is also laid down in Section 377(2) of the Code of Criminal Procedure in case of an appeal against sentence.

22. Careful reading of the above provisions suggests that CBI or any other agency empowered to investigate into an offence under any Central Act other than the Court, The Central Government may, subject to the provisions of subsection (3) also direct Public Prosecutor to present an appeal. In case of the High Court, the learned Additional Solicitor General is the authorized legal representative of the Central Government. His opinion may be obtained by the CBI to come to a decision as to whether an appeal should be preferred against a judgment and order of acquittal or for enhancement of sentence by the CBI or not. This Court fails to understand why the case record will travel to Delhi to obtain formal permission of the Director of CBI for filing an appeal before this Court when the Director of CBI is after all a senior police officer. This Court obviously trusts and hopes that the Central Government in its executive branch will also trust the expert opinion of the learned Additional Solicitor General more than the Director of CBI who may have varied experience in investigation but he does not have better legal acumen than the Additional Solicitor General.

23. Therefore, this Court proposes amendment of clause 21.9 of CBI (Crime Manual, 2022) by the CBI in its administrative authority empowering the Additional Solicitor General of the High Court to give his

opinion as to whether an appeal should be filed against a judgment and order of acquittal or for enhancement of sentence and on the basis of the opinion given by the learned Additional Solicitor General, the zonal office may be permitted to file Memorandum of Appeal within the period of limitation. This Court sincerely believes that the above arrangement, if incorporated, the CBI will be able to file appeals before the Court within the period of limitation, failing which there may be high chances that the appeals filed by the C.B.I. may be dismissed on the ground of limitation.

24. The observation of this Court be sent to the learned Additional Solicitor General, High Court, Calcutta with a request to send a copy of the order to the Director, CBI.

25. A copy of this order also be sent through the learned Additional Solicitor General, High Court, Calcutta requesting him to send the same to the Secretary, Department of Home, Government of India for consideration.

26. The CBI and the Central Government is directed to submit its opinion within one month from the date of this order.

27. The application under Section 5 of the Limitation Act is, however, allowed on contest relying on a decision of *Lalu Prasad Yadav* (supra).

(Bibek Chaudhuri, J.)