

ITEM NO.20

Court 6 (Video Conferencing)

SECTION II-C

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CRIMINAL) Diary No.45871/2019

(Arising out of impugned final judgment and order dated 26-03-2018 in 561A No.66/2010 passed by the High Court of Jammu & Kashmir And Ladakh at Srinagar)

CENTRAL BUREAU OF INVESTIGATION & ANR.

Petitioner(s)

VERSUS

MOHAMMAD ALTAF MOHAND & ANR.

Respondent(s)

(IA No.10338/2020-CONDONATION OF DELAY IN FILING)

Date : 08-11-2021 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Petitioner(s) Mr. Sanjay Jain, ASG
Mr. Sanjay Kumar Tyagi, Adv.
Mr. P. V. Yogeshwaran, Adv.
Mr. Shantanu Sharma, Adv.
Mr. Navanjoy Mahapatra, Adv.
Mr. Arvind Kumar Sharma, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

IA No.10338/2020-CONDONATION OF DELAY IN FILING

We have perused the affidavit filed by the Director, CBI in pursuance to the orders passed by us.

In so far as the facts of the present case are concerned, we have noticed that there was no justifiable reason at all for the file to remain pending for comments of the Deputy Legal Advisor in the office of Head of Branch from 09th May, 2018 to 19th January, 2019 as noticed in the order dated 07.2.2020. We found that the

handling of 95 matters by the Department could not be an excuse for an inordinate delay. In paragraph 4 of the affidavit now filed it is stated that the delay in the instant case is considerable and to address the same an enquiry is being conducted for ascertaining as to on whose account the delay arose. So far so good. But the next sentence submits that the same is "inadvertent" which is questionable. It is not reflective of the functioning of the petitioner as the premier Investigating Agency of the Country is the next sentence which we are willing to accept.

We are thus of the view that the enquiry should be concluded to fix responsibility on the officers responsible for the delay and we are inclined to thus condone the delay of 542 days but subject to deposit of costs of Rs.25,000/- with the Supreme Court Group 'C' (Non-Clerical) Employees Welfare Association within four weeks to be recovered from the officer/ officials responsible for the delay. The enquiry be concluded and the recovery certificate be filed within a maximum period of four weeks' from today.

The application is allowed in the aforesaid terms.

We are, however, concerned with two other aspects which emerge from the affidavit filed by the Director, CBI. These are in the context of steps stated to be taken or proposed to be taken over inadequacies in the system. Among the bottlenecks pointed out in paragraph 13 of the affidavit is the fact that the CBI sent over 150 requests to Governments of Maharashtra, Punjab, Chhattisgarh, Rajasthan, Jharkhand, West Bengal, Kerala and Mizoram during the period 2018 to June, 2021 for grant of specific consent for

investigation of cases in the territory of these States. This is so as these eight States have withdrawn the general consent previously granted to DSPE (CBI) under Section 6 of the Delhi Special Police Establishment (DSPE) Act, 1946. These requests are stated to be made for investigating Trap cases, Disproportionate Assets cases, cases relating to allegation of cheating, forgery, misappropriation and loss of foreign exchange as also Bank Fraud cases. The requests are stated to have been granted in less than 18% cases, which were related mainly in cases of Trap of alleged corrupt Central Public Servants. The requests in 78% cases are stated to be pending which mainly pertains to Bank Frauds of high magnitude impacting the economy of the Country and this in turn leads to destruction or dissipation of evidence. This is certainly not a desirable position.

The second aspect with which we find ourselves concerned is the stay orders granted by the appellate courts and thus the pace of trial getting adversely affected, despite this Court having laid down parameters for grant of such stays. In this behalf the data is placed before this Court. The position as emerges from the Sessions Courts, High Courts and Supreme Court is set out in paragraph 18 which reads as under:-

"18. It is also experienced that Appeals pertaining to CBI take long time for disposal. As on date, the details of matters pending before the Sessions Courts, Hon'ble High Courts and the Hon'ble Supreme Court in Appeal etc. are as under:-

Sessions Courts

	Filed by CBI	Filed by Accused	Total
Appeals	45	282	327

High Courts

	Filed by CBI	Filed by Accused	Total
Appeals/ Revisions/ Writ Petition	931	11327	12258

Supreme Court(WPs/SLP)

	Filed by CBI	Filed by Accused	Total
Appeals/ Writ Petition/ SLPs	218	488	706

"

In connection with the aforesaid is also the averment as set out in paragraph 17 which reads as under:-

"17. As per the provisions of Sec 378 (3) of Cr.PC, if an Appeal is to be preferred before the Hon'ble High Court against an order of acquittal, no Appeal shall be entertained except with the leave of the High Court. In some cases, Leave to Appeal is not granted immediately and it takes a lot of time for its admission. For instance, in 2G Scam cases, Leave to Appeal was filed by CBI within the prescribed timeline in year 2018, but the same has not been granted till date. (This also adds on to the difficulties being faced in prosecution of such cases)."

We believe that both the aforesaid aspects need to be addressed judicially by registering an appropriate petition as a public interest petition with notice sent to the concerned States and the High Courts.

We thus deem it appropriate that this aspect should be placed before Hon'ble the Chief Justice of India for his consideration and appropriate orders as it may not have any direct connection with the present case.

Ordered accordingly.

SLP (CRIMINAL) Diary No.45871/2019

Leave granted.

On completion of service, liberty is granted to mention for early listing.

(RASHMI DHYANI)
COURT MASTER

(POONAM VAID)
COURT MASTER