

06.04.2022

Sl. No. 09

Srimanta

Ct.No.42

**IA No.: CRAN/1/2018 (Old No.: CRAN/2687/2018)
in
CRMSPL/134/2018**

(Via Video Conference)

In the matter of : **Central Bureau of Investigation**

...petitioner.

Mr. Anirban Mitra, Adv.

...for the petitioner.

Mr. Abhra Mukherjee, Adv.,

Mr. Soumen Bose, Adv.,

Mr. Sauradeep Dutta, Adv.

...for the opposite parties.

This is an application under Section 5 of the Limitation Act for condonation of delay in filing the appeal against the judgment and order of acquittal passed by the Learned Special Judge (CBI), Court No. 1 at Alipore. CBI is the applicant before this Court.

According to the petitioner, there was delay by 144 days in preferring the appeal. According to the private opposite party/accused, the delay is 264 days which needs to be condoned on objective assessment of the application filed by the petitioner, affidavit-in-opposition filed by the private opposite party/accused and affidavit-in-reply filed by the petitioner. Explanation of delay is very common as taken by the CBI in almost all the cases where the appeals are filed by the said Government Agency. It is stated by the petitioner that the impugned judgment was passed by the Trial Court on 30th January, 2018. The CBI immediately made an application for obtaining certified copy of the said judgment

on 31st January, 2018. It was ready for delivery on 7th May, 2018 and the CBI obtained the certified copy on 15th May, 2018. Therefore, the period between 31st January, 2018 and 7th May, 2018 is to be condoned as per the provision of the Limitation Act. Now comes the explanation for delay. According to the CBI, on 16th May, 2018 Legal Section put up the file before the Head of the Branch (HOB) for perusal and order. After perusal of the same HOB forwarded the same to the Head of the Zone (HOZ) of the CBI, New Delhi for examination of the competent authority and necessary direction.

Thereafter, the file was moved at the Head Office at different levels for examination and finally Director, CBI approved for appeal on 30th June, 2018. The said order was communicated to this Branch on 2nd July, 2018 and on 3rd July, 2018. The Learned Additional Solicitor General, High Court, Calcutta was intimated to prepare the drafts of the instant appeal. Finally, the appeal was filed on 24th August, 2018.

It is also stated by the petitioner that after the order came from the Head of the Zone allowing the CBI to file an appeal it was sent to the learned Additional Solicitor General and he took some time for preparation of the memorandum of appeal, the application under Section 5 of the Limitation Act etc. and finally it was filed before this Court on 27th August, 2018.

Learned Advocate for the petitioner submits before me that the law on the point of condonation of delay is very clear. It is not the amount of delay or the number of days of delay in filing the appeal, the Court should take into account as to whether the delay was sufficiently explained or not. If the delay is sufficiently explained, the Court has ample power to condone the delay whatever may be the days of delay.

With this submission Mr. Mitra refers to an order passed by a Co-ordinate Bench of this Court in CRAN 1/2021 in CRR 1463 of 2021 on 14th December, 2021 where a Co-ordinate Bench condoned delay in filing a revisional application by the CBI. Mr. Mitra also refers to another order dated 8th March, 2022 passed by this Court in IA No:CRAN 1 of 2019 in CRMSPL 38 of 2019 where this Court condoned delay of 523 days in filing the application for special leave to appeal.

Reference was also made of a decision by the Division Bench of this Court reported in **1990(1) CLT 419**. Mr. Mitra specially refers to the following observation made by the Division Bench of this Court while condoning the delay in filing the appeal by the Government or Government Agency. The relevant portion is quoted below:-

"I would only like to draw particular attention to the following observation of the Supreme Court: 'refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.'(supra). The special factual features of the present cases considered in the light of the above legal principles, amply justify the conclusions, which we have reached, namely, that the application under Section 5 of the limitation Act should be allowed as the sequence of events, appearing from the materials before us, sufficiently explains the delay in filing the appeal. Appeal allowed."

It is also submitted by Mr. Mitra that CBI (Crime Manual, 2020) provides the provision in Rule 21.9 for filing of appeals and revisions. The said provision is also 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.

Learned Advocate for the opposite party, on the other hand, submits that the petitioner has failed to explain 264 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.

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 264 days cannot be condoned.

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.

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.

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.

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

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 Janani 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)."

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.

Any observation made in this order with regard to factual aspect of the case or the importance and gravity of

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.

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.

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 non-bailable 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."*

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

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 sub-section (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.

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.

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.

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.

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

The matter be listed for further order on **10th May, 2022.**

(Bibek Chaudhuri, J.)