

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 3639 of 2017

P. K. Saraswat & Another
Versus

Central Bureau of Investigation & Another

For the Petitioners : Mr. Shyamal Chakraborty, Adv.
Mr. Debajyoti Modal, Adv.
Mr. Pratik Gupta, Adv.

For the State : Mr. Anirban Mitra, Adv.

Heard on : 07.10.2024

Judgment on : 18.11.2024

Ajay Kumar Gupta, J:

1. By filing this Criminal Revisional application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973

(hereinafter referred to as 'CrPC'), the petitioners challenge the Impugned Order dated 30.10.2017 passed by the Learned Chief Judge, City Sessions Court at Calcutta in Criminal Appeal No. 77 of 2017.

2. By the said Impugned Order, the Learned Chief Judge allowed a petition filed under Section 5 of the Limitation Act, 1963 condoning the delay about 122 days in filing appeal under Section 378 (2) of the CrPC and admitted the Criminal Appeal No. 77 of 2017 filed by the Central Bureau of Investigation against the acquittal order passed by the Trial Court.

3. The brief facts, leading to filing of this instant Criminal Revisional application, are that the Opposite Party No. 1/Central Bureau of Investigation initiated a criminal case being CBI-GR 3844/87 against the petitioners herein and two others under Sections 120B/420/468/471 of the Indian Penal Code, 1860 with an allegations that the Proprietor of M/S East India Enterprises and Partners of M/S R.V. Enterprises, both of Calcutta produced forged Bank Guarantee bonds worth of Rs.1.23,521.26/- and got the consignments cleared from the Customs House, Calcutta as per the order of Hon'ble High Court, Calcutta. The Hon'ble High Court directed the Customs Authorities to release the materials on production of bank guarantees. According to the prosecution, the

said two bank guarantees were furnished at the time of clearing imported goods which were not in order and the same was found to be forged.

3a. The said case was heard before the Learned 21st Metropolitan Magistrate, CBI Court, Calcutta. After marshalling and scanning of the evidence and hearing the parties, the Learned Magistrate found that the petitioners herein were not found guilty for the charges under Sections 120B/420/468/471 of the Indian Penal Code, 1860 and they were acquitted under Section 248 (1) of the Code of Criminal Procedure, 1973. They were also discharged from their bail bonds. Whereas, another accused in the said case, namely, Bal Krishnan Nair was found guilty of the charges under Sections 120B/420/468/471 of the Indian Penal Code, 1860. He was sentenced to suffer simple imprisonment for a period of six months and to pay a fine of Rs. 1,000/- in each offence. In default, one-month more simple imprisonment for the charge of each offence separately punishable under Sections 120B/420/468/471 of the Indian Penal Code, 1860 and all the sentences of imprisonment shall run concurrently. Other accused, namely, Shyam Sundar Sharma also found conspirator by the Learned Magistrate but he died before pronouncement of judgment.

3b. Being aggrieved by and dissatisfied with the said Judgment and Order dated 28.12.2016 passed by the CBI Court, the CBI/Appellant/Opposite Party No. 1 herein filed an application for leave to appeal against such acquittal on 18th August, 2017 although it was required to be filed by 24th May, 2017. Therefore, application for leave to appeal was not filed within the time prescribed by law as such the appellant/CBI filed an application under Section 5 of the Limitation Act praying for condonation of delay of 122 days delay in filing leave to appeal. After being satisfied with the cause shown by the Appellant/CBI, the Learned Chief Judge, City Sessions Court has allowed the said application filed under Section 5 of the Limitation Act but the contention of the Petitioners is that the Appellate Court without considering huge unexplained delay whimsically and capriciously condoned the delay though the appellant has failed to satisfied the sufficient causes for such delay as such, the petitioners herein approached before this Hon'ble High Court by filing a Criminal Revisional application and the same has come up before this Bench for its disposal.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

4. Learned counsel appearing on behalf of the petitioners submitted that the trial of the said case being GR No. 3844 of 1987 was pending before the Learned Metropolitan Magistrate Court (CBI

Court) for nearly about 30 years and, thereafter, the case was disposed of vide order dated 28.12.2016, the present petitioners has been declared as not guilty. The aforesaid fact goes to prove that the present petitioners had to undertake prolonged mental pain, agony and harassment for continuous period of 31 years from November, 1985 to December, 2016 with a vindictive attitude and attempts have been made by the CBI being falsely implicated them.

4a. It is further submitted that the significant portion of the lives of both the petitioners has been destroyed on account of false allegations made against them which on trial has been proved to be false and the petitioners have been acquitted. Whereas two other accused have been held as guilty and one has been sentenced for six months imprisonment and a fine of Rs. 1,000/- and another accused died in the month of October, 2016 before pronouncement of the Judgment.

4b. It is further submitted that the CBI Authorities did not stop there with that but initiated another round of litigation only to harass the Petitioner by filing a Criminal Appeal being C.R. No. 77 of 2017 before the Learned Sessions Judge at Bichar Bhawan, Calcutta. The said Appeal has been filed after a long delay. It is to be taken note of that free copy of the order dated 28.12.2016 was provided both to the

prosecutions and the accused on the same date, i.e., 28.12.2016 being the date on which the judgment was pronounced.

4c. It is further submitted that the petitioners obtained certified copy on 10.01.2017 i.e. within 12 days from the date of application whereas CBI allegedly stated they got certified copy on 24.02.2017, the reason of which is nothing but lack of diligence and follow-up. When the petitioners were able to obtain the copy within 12 days, the CBI could not justify as to why they took about two months' time to obtain the same. It is again repeated that for filing appeal, free copy was supplied by the Learned Trial Court which is duly certified by the court is sufficient enough for preferring appeal. Besides that decision, confirmation and/or approval from the respective department could have very well be obtained on the basis of the free copy which is supplied by the Learned Trial Court to the prosecution and the accused on the date of pronouncement of the judgment.

4d. It is further submitted that the appeal was filed on 26.07.2017. The period of limitation for filing appeal before the Learned Sessions Court is 60 days under Section 378(5) of the CrPC. The limitation would have come to an end on 24.04.2017. The opposite party/CBI is absolutely incorrect in calculation of the period of limitation and in fact, there is no explanation as to the period of delay caused in filing the appeal has been explained/given and the

application under Section 5 of the Limitation Act, 1963 has been filed on erroneous basis. The said application was bereft of any sufficient reason and explanation which is required to be set aside. Consequently, the appeal should not have been admitted and the same may be dismissed.

4e. Learned advocate representing the Petitioners has placed a reliance of a judgment in the case of ***State of West Bengal Vs. Goutam Kr. Dutta***¹ to support his contention that the Government Authorities could not be treated as privileged class and application for delay should not be allowed when a public officers who are not diligent for just no cause and reasons in filing appeal. In the said judgment, the appeal has been dismissed for delay of 82 days filed by the Government Authorities. In another two judgments in the case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Ors.***² and ***Post Master General and Ors. Vs. Living Medial India Ltd. and Anr.***³, the Hon'ble Supreme Court also observed that the Government Officials are to be diligent and no leniency can be shown to such officers, who are not diligent by allowing Section 5 of the Limitation Act, 1963.

¹ 2017 (1) CHN (Cal) 397;

² 2014 (1) ICC 71;

³ (2012) 3 SCC 563.

SUBMISSION ON BEHALF OF THE OPPOSITE PARTY/ CBI:

5. Per contra, learned counsel representing the CBI raised the objection with regard to the prayer of the petitioners and further submitted that the CBI Authorities have explained the delay in filing the appeal categorically therein that due to official formalities for vetting and approval from the Higher Authorities, it causes delay in filing leave to appeal. Delay has been categorically demonstrated in the application in details. Furthermore, the Learned counsel filed the entire certified copy of the proceeding being Criminal Appeal No. 77 of 2017 wherefrom it can be ascertained that the matter is unnecessarily lingering since long due to pendency of this revisional application without any sufficient reasons. The stage of the proceeding is for hearing of the appeal. Therefore, this Criminal Revisional application has no merit and is liable to be dismissed.

Learned Counsel representing the CBI has place reliance of a judgement passed by the Co-ordinate Bench of this Court in the case of ***Central Bureau of Investigation Vs Binod Kumar Maheswari & Ors. (CRMSPL 50 of 2022)*** to support his contention that the Hon'ble High Court allowed the condonation of delay of 1452 days' delay for the reason of obtaining approval from the higher authority. Generally, it takes time for approval from the higher authority because there is different layer of official procedure. Files

moves from one department to the other department for according approval to file appeal. The delay in the present case was only 122 days as such Learned Judge has allowed the application after condoning such delay after being fully satisfied with the cause shown or explained.

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:

6. Heard the rival contention and submissions of the parties and on perusal of the record, this Court finds reasons for delay in filing leave to appeal has been categorically averted in the application filed under Section 5 of the Limitation Act, 1963 as, *inter alia*, as follows:

“2. That the application for Certified copy of the impugned Judgment and Order was made on 29.12.2016. The date of notification for supplying folios and stamps was made on 05.01.2017 and the same was supplied on 17.01.2017. The certified copy of the impugned Judgment was ready for delivery on 23.02.2017 and handed over to prosecution on 24.02.2017.

As such 24.05.2017 was the last date of filing of the instant application for Leave to Appeal under Section 378 (2) of the Code of Criminal Procedure.

3. That in compliance with the Official Procedure of Central Bureau of Investigation (in short CBI) the file

with proposal of filing of appeal against the impugned Judgment and Order dated 28.12.2016 travelled to different officers for vetting and comments as follows: -

(i) The Certified copy of the Judgment and Order dated 28.12.2016 was obtained on 24.02.2017 and thereafter the same was sent to Learned Senior Public Prosecutor for his comments. Comment of the Learned Senior Public Prosecutor was received on 07.03.2017.

(ii) Thereafter comment of Deputy Legal Advisor (I/c) was received on 08.03.2017.

(iii) Thereafter the file was placed before the Superintendent of Police / Head of the Branch for his comments who gave his comments on 03.04.2017 with an endorsement to put up the file to Joint Director.

(iv) Thereafter file was put up before the Joint Director and he gave his comments on 08.05.2017 and marked the file before the Additional Director, CBI (ADCBI).

(v) Additional Director, CBI on 25.05.2017 directed to put up the file before the Director of Prosecution.

(vi) File was put before the Director of Prosecution and he endorsed the File to Additional Legal Advisor for his comments. Thereafter comment of Additional Legal Advisor was received on 31.05.2017 by Director of Prosecution.

(vii) Comment of Director of Prosecution was given on 09.06.2017 and the file was put up to Additional Director, CBI.

(viii) Additional Director, CBI gave his comments on 12.06.2017 with recommendation for filing an appeal against the impugned Judgment and Order dated 28.12.2016 passed by Ld. 21st MM, Kolkata and put up the file to Director, CBI for final approval.

(ix) Director, CBI had approved the recommendation of Additional Director, CBI on 16.06.2017 and marked the file to Addl. Director, CBI, which was subsequently marked to HOZ, CBI, North East Zone, Guwahati by Addl. Director, CBI on 19.06.2017.

(x) File was put before the HOZ, Guwahati who after the perusal the file on 27.06.2017 marked to Head of the Branch (HOB), Kolkata.

(xi) Thereafter as per directions of Head of Branch, CBI, SCB, Kolkata Appeal under Section 378 (2) of the Code of Criminal Procedure, 1973 was drafted and sent to Learned Senior Public Prosecutor for vetting on 10.07.2017.

(xii) Application was vetted by the Learned Senior Public Prosecutor and the same was sent on 12.07.2017 to Dy. Legal Advisor for vetting.

(xiii) On being vetted by the Dy. Legal Advisor the Draft Application under Section 378 (2) of the Code of Criminal Procedure, 1973 was sent to Head of Branch on 13.07.2017.

(xiv) On 13.07.2017 the Head of Branch approved the Appeal and application under Section 5 of the Limitation Act.

4. Thereafter the Application under Section 378 (2) of the Code of Criminal Procedure, 1973 and application under Section 5 of the Limitation Act handed over to Learned

Senior Public Prosecutor on 17.07.2017 for submission before the Learned Court.”

7. The appeal was filed on 26.07.2017 and the delay in filing the appeal was about 122 days. The reason for delay has been explained by the Appellant/CBI and same is satisfactory and being satisfied the Learned Appellant Court has allowed the same. It is true that there are layers of hierarchy for vetting and obtaining approval in CBI cases for filing appeal. Furthermore, filing of appeal is statutory right that cannot be curtailed only on technical grounds. The Court is not required to adopt a hyper technical or pedantic approach. Substantial justice should be preferred over technical justice. Court should rather adopt a liberal approach when there is short duration but at the same time court should adopt strict approach where the delay is unexplained inordinate delay. In the present case 122 days delay in filing leave to appeal has been duly explained in the application for condonation of delay. This court also satisfied with the reasons shown for delay in filing appeal. Therefore, the Revisional application has no merit. Consequentially, this court does not find any reasons to interfere with the impugned order dated 30.10.2017 passed by the Learned Chief Judge, City Sessions Court at Calcutta.

8. Accordingly, the Impugned Order dated 30.10.2017 passed by the Learned Chief Judge, City Sessions Court at Calcutta in Criminal Appeal No. 77 of 2017 is hereby concurred and affirmed.

9. Consequentially, **CRR 3639 of 2017** is, thus, **dismissed**. Connected applications, if any, are also, thus, disposed of.

10. Let a copy of this judgment and order be sent to the Learned Court below for information and taking necessary action so that the appeal may be heard immediately and take it in logical conclusion.

11. Interim order, if any, stands vacated.

12. Parties will act on the server copies of this order uploaded on the official website of this Court.

13. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)