

GAHC010194252020



2025:GAU-AS:13441

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Crl.)/7/2021

DIRECTOR, CENTRAL BUREAU OF INVESTIGATION
THROUGH HEAD OF BRANCH, ANTI-CORRUPTION BRANCH, OPP.- BALAJI
TEMPLE, BETKUCHI, GUWAHATI- 781035.

VERSUS

SHRI S.N. SANYAL AND 4 ORS.
THE THEN DIRECTOR, DDK, SILCHAR.

2:SHRI P. K. SINGSON
THE THEN DDG/NER
DDK
GUWAHATI.

3:SHRI S. N. JAYRAJAN
THE THEN PROGRAMME EXECUTIVE
DDK
SILCHAR.

4:SHRI S. K. CHAKRABORTY
THE THEN PROGRAMME EXECUTIVE
DDK
SILCHAR.

5:SHRI PREMANGSHU PAUL CHOUDHURY
THE THEN TRANSMISSION EXECUTIVE
DDK
SILCHAR AND OTHERS

Advocate for the Petitioner : SC, CBI, MR. S C KEYAL

Advocate for the Respondent : ,

Linked Case : CrI.L.P./1/2021

DIRECTOR
CENTRAL BUREAU OF INVESTIGATION
THROUGH HEAD OF BRANCH
ANTI-CORRUPTION BRANCH
OPP.- BALAJI TEMPLE
BETKUCHI
GUWAHATI- 781035.

VERSUS

SOMNATH SANYAL AND 6 ORS.
SON OF LATE KRISHNA KAMAL SANYAL
R/O- 15
BABUGANJ
P.S. HASANGANJ
LUCHNOW- 20 (UP).

2:SABIR KUMAR CHAKRABORTY
S/O- LATE SUDHIR KUMAR CHAKRABORTY
R/O- P-517
JAIGIRGHAT
1 NO. BACHHARPARA
THAKURPUKUR
KOLKATA- 700063.

3:S. N. JAYRAJAN
S/O- LATE NARAYAN PILLAI
P.S. VATTIYOOR KAVU
THIRUVANNANTHAPURAM.

4:PREMANGSHU PAUL CHOUDHURY
S/O- LATE PRITHWISH PAUL CHOUDHURY
P.O. AND P.S. SILCHAR
DIST.- CACHAR
ASSAM

5:KAUSHIK DEY BISWAS
S/O- LATE FATIK DEY BISWAS
P.O. AND P.S. SILCHAR
DIST.- CACHAR

ASSAM

6:PIJUS KANTI DAS
S/O- LATE PRITI BHUSAN DAS
P.O. AND PS. SILCHAR
DIST.- CACHAR

7:KAMLESH DEY BISWAS
S/O- LATE FATIK DEY BISWAS
P.O. AND P.S. SILCHAR
DIST.- CACHAR
ASSAM.

Advocate for : SC
CBI

Advocate for : MS D HAZARIKA (R-3
4) appearing for SOMNATH SANYAL AND 6 ORS.

Linked Case :

DIRECTOR
CENTRAL BUREAU OF INVESTIGATION (E)

VERSUS

S. N. SANYAL AND 4 ORS

Advocates for the petitioner : Ms. M Kumari, S.C, CBI

Advocate for the respondent: Mr. D.K Das, Ld. Sr. Advocate

BEFORE

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date of Hearing : **22.09.2025.**

Date of Judgment : **26.09.2025.**

JUDGMENT AND ORDER (C.A.V)

26.09.2025

1. Heard Mr. M Kumari, learned Standing counsel for CBI. Also heard Mr. D.K Das, learned Sr. counsel appearing for the respondents.

2. This is an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 310 days in preferring the connected Criminal Appeal against the impugned Order dated 14.06.2018 passed by Special Judge, CBI, Additional Court No. II, Chandmari, Guwahati, Assam in CBI Case No. RC-01(A)/2012-SIL (SC 28/2006), acquitting the respondents from the offence under Section 120B/409/420/467/468/471 of IPC and Section 13(2) Section R/W 13(1)(c) and (d) of P.C Act, 1988.

3. The facts leading to the case against the present respondents may briefly be stated. The accused Somnath Sanyal and S.N Jayrajan while posted and functioning as Director and program Executive of DDK, Silchar respectively during 2000-2002, entered into a criminal conspiracy with each other along with different private producers and fake and fabricated Bank Guarantees from such producers as lien against advance payment of 40% of the budget of the programmes to producer wise under commissioned programme categorized for making the film under commissioned programme which was a special Package made to the talented Film Directors of Northeast to them in the production of a variety of things in order to promote new Talents etc. The Balance of 60% was released to the Producers as final payments on acceptance of the programme.

4. The Ld. Court Framed the Charges under Section 120B R/W Section 419/420/465/468/471 IPC and Section 13(2) R/W Section 13(1)(c) & (d) of P.C Act against the accused persons. However, the case against the accused P.K. Singson, Somitra Deb Kanungoe and Biswajit Choudhury stood abated since they had expired

during trial of the case, whereas, the accused Smti Santashree Shome and Shri Subir Deb, had been discharged.

5. Upon completion of the trial, the Ld. Court below, while acquitting the accused persons/respondents held that it cannot be said that any of the officials of Doordarshan Kendra, Silchar acted with dishonest intentions or that there had been any abuse of the official position on the part of any of the accused persons to cause pecuniary advantage to the private producers and there was no loss to the public interest and that in respect of commissioned programs, it cannot be said that any criminal offence has been committed by the accused persons.

6. Being aggrieved the connected appeal has been preferred.

7. Mr. M Kumari, learned Standing counsel for CBI has submitted that due to change of panel advocates and forgetfulness as well as bonafide mistake, a delay of 310 days has been occasioned in preferring the present appeal. It is stated in the present application that the applicant/appellant obtained the certified copy of the impugned judgment from the trial Court on 15/06/2018. After receipt of the impugned Judgment and order dated 14/06/2018, process was initiated for legal opinion and comments which was put on for the said purpose and the comment of conducting public prosecutor was received on 25/06/2018 recommending appeal against the judgment before higher Judicial forum. Thereafter, the comment of Head of Branch was prepared on 23/07/2018 recommending filing of appeal before the Hon'ble Gauhati High Court against acquittal of the accused respondent. Thereafter, the DLA, CBI, Kolkata has given his comments was 30/07/2018 and then DIG (Range), CBI, Guwahati has given his comment on 04.08.2018. Thereafter, Head of Zone (North East) has given his comment on 14/08/2018. Then on 06.09.2018 ALA, CBI, New Delhi has submitted his comments and then Director of Prosecution, CBI, New Delhi had given his comments on 12.09.2018 to file appeal against the acquittal order. Thereafter as per procedure the matter was placed before the Additional Director of

CBI, New Delhi and on 14.09.2018 he also recommended to file appeal in the matter and then finally on 14.09.2018 Director, CBI accorded approval for filing appeal against the acquittal of accused respondent.

8. Thereafter, on 12.10.2018 the Under Secretary, Department of Personnel & Training, ADV-II(B), Ministry of Personnel, Public Grievances & Pension, Government of India, North Block, New Delhi was approached for obtaining approval of the Central Government for filling the Criminal Appeal against acquittal of accused respondent.

9. On 05.12.2018 the Ministry of Personnel, Public Grievance & Pension, and Government of India accorded approval to file appeal in the matter which was received by CBI, Shillong branch on 12.12.2018, thus the delay.

10. That the Criminal Appeal, Special Leave Petition and petition for condonation of delay duly prepared & notarized were submitted to ASG, Gauhati High Court, Shri Subhash Keyal for filing in this Hon'ble Court. However, due to shifting of his premises and thereafter outbreak of Corona virus (COVID-19) pandemic the petitions were misplaced in the office of ASG. Therefore, the petitions were again submitted to ASG for filing in this Hon'ble Court.

11. Controverting the above submissions and statements, an affidavit in opposition has been filed on behalf of respondent No. 1, 3 & 5. It is stated therein that the actual delay is of 732 days and not 310 days by calculating the period from 12.12.2018 when approval was stated to have been accorded by the Ministry of Personnel, Public Grievances & Pension, Government of India as stated in the delay condonation petition. It is further stated that after approval accorded by the Ministry of Personnel, Public Grievances & Pension, Government of India the file was received on 12-12-2018 by CBI/Shillong Branch, but the applicant /appellant has failed to explain the delay thereafter and as to how the appeal and condonation petition came to be filed on 23-12-2020.

12. It is contended that the record would show that for the COVID-19 pandemic

the entire 2018, 2019 and 2020 was not declared lockdown period and in fact High Court as well as filing section remained open by maintaining distance. To the information of the deponent, there had been 4(four) lock downs (25 march 2020 to 31 May/2020) in India. In any case Judgment was delivered on 14-06-2018 during which time there was no pandemic and the whole of 2019 was free from pandemic so the applicant cannot take refuse to COVID-19 and escape the liability to explain the period of delay.

13. It is submitted that because of the lackadaisical approach, each of the respondents had suffered in the entire career of their service and even after their retirement they are having problems for their pensionary benefits. As the records would reveal, the case started in the year 2002 by filing FIR on 24.01.2003 and charge-sheet was submitted on 23.03.2006.

14. In course of her submissions, Ms. M Kumari, learned Standing counsel, CBI has relied upon the decision of the Hon'ble Supreme Court in **Inder Singh v. State of Madhya Pradesh 2025 LiveLaw (SC) 339** wherein it has been observed by the Hon'ble Supreme Court that there can be no quarrel on the settled principle of law that delay cannot be condoned without sufficient cause, but a major aspect which has to be kept in mind is that, if in a particular case, the merits have to be examined, it should not be scuttled merely on the basis of limitation.

15. Per contra Mr. D.K Das, learned Sr. counsel appearing for the respondents has relied upon the decision of the Hon'ble Supreme Court in **Pathapathi Subba Reddy (Died) By L.R.S and Others v. The Special Deputy Collector (I.A) (2024) INSC 286** wherein the Hon'ble Supreme Court culled out the principles for condonation of delay in the context of Section 3 & 5 of the Limitation Act, 1963 and held that :

“On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act.

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision."

16. It is submitted by Mr. D.K Das, learned Sr. counsel appearing for the respondents that in almost similar circumstances involving the CBI, a co-ordinate Bench of this Court in **Director Central Bureau of Investigation (CBI) V. Mukul Talukdar and Five Others GAHC 010008892019** has declined to condone the delay of 313 days in preferring the appeal against the judgment of acquittal passed by the Ld. Trial Court due to non-explanation of a significant part of the delay. In this regard, Mr. D.K Das, learned Sr. counsel appearing for the respondents has referred to

the decision of the Hon'ble Supreme Court in **Sandhya Educational Society and Another v. Union of India 2014 7 SCC 701** wherein it has been held that a judgment of a coordinate Bench has to be respected by the Bench while deciding a similar matter. As already reflected hereinbefore, the final approval at the government level was received by the CBI, Shillong Branch on 12.12.2018 and the appeal along with the delay condonation application has been filled on 23.12.2020 i.e. after 2 years of receiving approval. This has been sought to be explained by stating that after preparation of the Criminal Appeal, special leave petition and petition for condonation of delay was submitted to the Ld. A.S.G for filing. But due to shifting of the premises of the Ld. A.S.G and thereafter, due to outbreak of COVID-19 pandemic, the petitions were misplaced in the office of the Ld. A.S.G. However, there is no mention of any date as to when the said documents were submitted to the Ld. A.S.G or as to when the petitions were discovered to have been misplaced in the Office of the Ld. A.S.G or as to when the same were again prepared and submitted to the Ld. A.S.G for filing. Mention has also been made of a special leave petition being prepared but it is not known to the Court as to what special leave petition is required to be filed before this Court. What is however known to this Court is that there is no such provision for preferring any such special leave petition before this Court. A long delay of 2 years even after receipt of final approval on 12.12.2018 is thus, sought to be explained away in a most casual and carefree manner without any reference to any dates or specific particulars, probably on the assumption that it is a mere formality which is it certainly not. As rightly contended by the respondents, the lockdowns during the COVID-19 pandemic period took place on four occasions from 25.03.2020 to 31.05.2020 and rest of the period was free from such lockdowns during which the Hon'ble High Court was functioning by maintaining COVID protocol and the filing section remained open. Therefore, on that count also, the plea of the applicants/appellants does not hold any water.

17. The learned Sr. counsel for the respondent has referred to another decision

of the Hon'ble Supreme Court in **Mool Chandra v. Union of India and Another (2024) INSC 577** wherein the prior decision of the Hon'ble Supreme Court in **Commissioner, Nagar Parishad, Bhilwara v. Labour Court, Bhilwara and Another reported in 2009(3) SCC 525** has been reaffirmed wherein it has been held that while deciding an application for condonation of delay, the Hon'ble High Court ought not to have gone into the merits of the case.

18. In addition to the above, an important aspect while considering the use of the discretion granted to the Court by Section 5 of the Limitation Act, 1963 is the prejudice that would be caused to the opposite party by reopening a matter to which a quietus has been given long ago. In the instant case, the respondents have faced trial from the year 2003 to 2018 and as of now, 22 years have elapsed. All except one of the respondents have retired from service and the remaining respondent is also on the verge of retirement. Therefore, an indulgent approach in condoning such delay without the petitioners having made out cogent or sufficient grounds is likely to cause immense prejudice to the respondents.

19. With reference to the decision of the Hon'ble Supreme Court in **Inder Singh (Supra)**, wherein it has been held that delay cannot be condoned without sufficient cause but if in a particular case, merits have to be examined, it should not be scuttled merely on the basis of limitation. I have gone through the impugned judgment and order as well as the evidence on record but the same does not warrant the exercise of the discretion on the grounds of the necessity to examine the merits of the case. As there appears nothing palpably wrong or incorrect in the findings of the Ld. Trial Court.

20. In view of what has been discussed above, I do not find sufficient cause or any good ground either on legal or equitable considerations to exercise discretion under Section 5 of the Limitation Act to condone the delay in preferring the connected

appeal.

21. Consequently, the Interlocutory Application stands dismissed.

JUDGE

Comparing Assistant