

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2024
(ARISING OUT OF SLP (CRIMINAL) NO. 14267 OF 2023)

HYDER

APPELLANT (S)

VERSUS

STATE OF KERALA

RESPONDENT (S)

O R D E R

1. Leave granted.
2. Heard Mr. Ritesh Kumar Chowdhary, learned counsel appearing for the appellant. Also heard Mr. Dileep Poolakkot, learned counsel appearing for the State of Kerala.
3. The challenge here is to the order (dated 23.06.2023) of the High Court whereunder, the State's application for condonation of delay of 1184 days in presenting the Criminal Appeal was allowed. The impugned order reads as under:

"This application is filed seeking to condone the delay of 1184 days in filing the appeal. The appeal is filed against the judgment by which the trial court acquitted the respondent based on the decision in Mohanlal v. State of Punjab [2018 (3) KLT 852 (SC)]

2. Learned Public Prosecutor submitted that the law laid down as per the decision in Mohanlal (supra) was held per incuriam and overruled by Mukesh Singh. v. State Narcotic Branch, Delhi [2020 (10) SCC 120].

3. Learned counsel for the respondent submitted that a subsequent change in law cannot be a ground for condoning the delay, particularly when the appeal was not pending when the subsequent decision was rendered.

4. As the judgment under appeal is seen rendered solely based on the dictum in Mohanlal (supra) and the legal position having changed, the appeal has to be

heard on merits. Being so, the delay is liable to be condoned.

Hence, the delay in filing the appeal is condoned."

4. The learned counsel for the appellant submits that the appellant was acquitted on 10.12.2018 by the learned Special Court and that the acquittal was based on multiple reasons including the fact that there is no reliable or cogent material before the Court to show that the sample which reached the laboratory, was indeed the sample drawn from the contraband seized from the possession of the accused. On the aspect of the acquittal being based on the law declared by this Court in *Mohan Lal v. State of Punjab* reported in (2018) 17 SCC 627, the counsel submits that under the ratio in the said judgment, it was held that a fair investigation would postulate that the informant and the investigator must not be the same person. It is therefore contended that merely because there is change of law on this aspect in *Mukesh Singh v. State (Narcotic Branch of Delhi)* reported in (2020) 10 SCC 120, the High Court could not have condoned the inordinate delay in presenting the special appeal.

5. In *Mukesh Singh* (supra), the Court said that in a case where the informant himself is the investigator, that by itself cannot be sufficient to hold that the investigation is vitiated on the ground of bias or like factor. The question of bias or prejudice would depend upon facts and circumstances of each case.

6. On the other hand, the learned counsel for the State would argue that when there is a change of law and the Court subsequently

clarified that the informant can also be the investigator in *Mukesh Singh* (supra), the condonation of delay by the High Court on account of the change of law, cannot be faulted.

7. We have perused the application for condonation of delay filed by the State before the High Court and notice that there is hardly any acceptable explanation to condone the huge delay of 1184 days, in presenting the appeal. Nothing is mentioned as to why, following the acquittal of the appellant on 10.12.2018, the State waited for over 3 years, to file the appeal on 16.09.2022.

8. As earlier noted, the acquittal of the appellant was not only because of the judgment in *Mohan Lal* (supra) but it also was based on the failure of the prosecution to establish that the sample which was sent to the laboratory, was drawn from the contraband, seized from the possession of the accused.

9. On the arguments, we may benefit by advertizing to the decision in *Delhi Development Authority v. Tejpal & Ors.* reported in (2024) 7 SCC 433 where the Court held as under:

"47. To sum up, we hold that subsequent change of law will not be attracted unless a case is pending before the competent court awaiting its final adjudication. To say it differently, if a case has already been decided, it cannot be re-opened and re-decided solely on the basis of a new interpretation given to that law."

10. Having considered the basis for the acquittal and also the fact that change of law by itself cannot be a ground for finding fault with the acquittal judgment rendered in favour of the

appellant as far back as on 10.12.2018, the impugned order dated 23.06.2023 of the High Court in our assessment, cannot be sustained. Accordingly, by setting aside the order dated 23.06.2023 in the Crl. M.A. No. 1 of 2022 in Crl. Appeal No. 762 of 2023, the appeal is allowed.

.....J.
(HRISHIKESH ROY)

.....J.
(S.V.N. BHATTI)

NEW DELHI;
DECEMBER 10, 2024.

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

Petition(s) for Special Leave to Appeal (Crl.) No(s) . 14267/2023

[Arising out of impugned judgment and order dated 23-06-2023 in CRLMA No. 1/2022 in Crl. A. No. 762/2023 passed by the High Court of Kerala at Ernakulam]

HYDER

Petitioner(s)

VERSUS

STATE OF KERALA

Respondent(s)

(IA No. 227780/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 10-12-2024 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE S.V.N. BHATTI

For Petitioner(s) Mr. Ritesh Kumar Chowdhary, AOR
Mr. Niyas Valiyathodi, Adv.
Mr. Akash Kumar Singh, Adv.

For Respondent(s) Mr. Harshad V. Hameed, AOR
Mr. Dileep Poolakkot, Adv.
Mrs. Ashly Harshad, Adv.
Mr. Amar Nath Singh, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The appeal stands allowed in terms of the signed order.

Pending application(s), if any, shall stand closed.

(NITIN TALREJA)
ASTT. REGISTRAR-cum-PS

(KAMLESH RAWAT)
ASSISTANT REGISTRAR

(Signed order is placed on the file)