

Petitioner Vs. Responden

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Court : Chennai Madurai

Decided On : Aug-16-2016

Judge : The Honourable Dr. Justice P. Devadass

Appeal No. : M.P.(MD) No. 1 of 2015 in Crl.O.P.(MD) No. SR35928 of 2015 & Crl.A.(MD) No. SR35927 of 2015

Appellant : Petitioner

Respondent : Responden

Judgement :

1. The petitioner seek condonation of delay of 685 days caused in preferring appeal as against the order of acquittal passed by the Trial Court.
2. The respondent / accused has been prosecuted before the learned Additional Chief Judicial Magistrate, Madurai, in S.T.C.No.2 of 2011, for his alleged commission of offence under Section 7(a)(1)(2), Section 41 Rule 61-E and Section 41 Rule 61-F of the Factories Act, 1948 (Amended Act, 1987) and Tamil Nadu Factory Rules, 1950.
3. The Trial Court, considering the evidence on record, on 30.09.2013, acquitted the accused. As against that, as stated already, there is a delay of 685 days in preferring the criminal appeal.

4. The learned Government Advocate (Criminal Side) submitted that sufficient reasons have been given in the affidavit filed by the Deputy Director of Industrial Safety and Health-1, Madurai. Opinion of the learned Additional Public Prosecutor has been obtained. Thereafter the file went through different administrative departments and finally the Government passed G.O., directing filing of appeal as against the order of acquittal. In the facts and circumstances, the delay may be condoned.

5. The respondent filed counter. The learned counsel for the respondent also contended that the delay remain unexplained. Even the affidavit filed by the Government Official does not disclose any plausible and acceptable reason to condone the delay.

6. The learned counsel for the respondent further submitted that where no explanation or the reason is satisfactory, the Court need not show any indulgence to such a petitioner. In support of her contention, the learned counsel for the respondent cited N.Balakrishnan v. M.Krishnamurthy [AIR 1998 SC 3222] and also an unreported decision of this Court in Crl.A.Sr.No.56478 of 2013, dated 12.03.2015 [V.Senthil Kumar vs. Prakash].

7. I have anxiously considered the rival submissions, perused the averments in the affidavit filed in support of the delay condonation petition and the counter filed by the respondent and also the decisions cited.

8. For preferring appeal or revision etc., prescribed period of limitation is fixed in the enactment. In the Limitation Act, exclusion of time under certain circumstances is provided. For instance, delay in obtaining certified copy of the Order / Judgment after filing copy application in due time etc. In certain cases, if sufficient cause is shown, the Court, exercising its judicial discretion, can condone the delay.

9. What is 'sufficient cause' has not been advisably defined in the Act. It depends upon the facts and circumstances of each case.

10. Earlier, in the matter of condoning the delay, Courts took a stringent stand. In fact, the Courts started viewing the matter with tinged glasses. It did arithmetical

work. It simply calculated the days of delay and decided accordingly.

11. But, there was a change in the judicial thinking. Courts started taking a pragmatic approach instead of doing the calculation work. Pragmatism prevailed over some wooden approach. Earlier, length of delay and range of delay were the criteria. But, later, if some plausible reasons are given, the Court started condoning the delay even the delay may be longer. But, when no acceptable reason is given, even the delay is short, the Courts did not condone the delay.

12. In this connection, it is relevant to extract hereunder the dictum of the Hon'ble Supreme Court laid down in Balakrishnan (supra):

9. It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court.

13. There are private litigants and Government litigants. Before the Court, where the litigant is Government or private, all are one and the same. It is not only equality of law, but equal application of law. Thus, in these matters there cannot be any special concession or consideration, merely, because the litigant is a Government. Usual red-tapism cannot be ground for giving concession to the Government departments.

14. Generally, explanation for the delay is found in the affidavit of the concerned Official of the Government Department. In this case, Mr.P.Sankararamesheeran, Deputy Director of Industrial Safety and Health-1, Madurai, filed affidavit as to the delay. Reasons for the delay are particularly stated in Para No.2 of the affidavit. It runs as under:

2.I humbly submit that in this case, the judgment of the Additional Chief Judicial Magistrate Court, Madurai, was passed on 30.09.2013 vide S.T.C.No.1 / 2011. The copy of the judgment was applied by the then Inspector of Factories, Madurai and obtained the same from the above court. Then, legal opinion was obtained from the Additional Public Prosecutor, Additional Chief Judicial Magistrate Court, Madurai, who has opined that this is not a fit case for filing an appeal, vide ref.No.Nil, dated 29.4.2014. Further, all the above papers along with complete records were submitted to the Director of Industrial Safety and Health, Chennai, through proper channel, vide reference No.C/2177/2014, dated 19.5.2014. Subsequently, the Director of Industrial Safety and Health, Chennai, sent the proposal to the Secretary to Government Labour and Employment (M2) Department, Secretariat, Chennai. In turn, the Secretary to Government, Labour and Employment Department, Secretariat, Chennai, forwarded the above proposal by way of Government Order for filing an appeal to the Director of Industrial Safety and Health, Chennai, vide letter in G.O.No.103, Labour and Employment (M2) Department, dated 24.3.2015, which was received by the Director of Industrial Safety and Health, Chennai, who in turn, forwarded to me through proper channel and the same was received by me on 8.5.2015. Then, I approached the Director of Industrial Safety and Health, Chennai and obtained a requisition letter addressed to the learned Public Prosecutor, High Court, Madras, vide Letter No.G1/13991/2014, dated 13.08.2015 for filing an appeal against the acquittal of accused based on the above said Government Order No.103, dated 24.03.2015. The learned Public Prosecutor, High Court, Madras, received the above proposal on 14.10.2015 and after complete perusal of the entire records thought that this is a fit case for filing an appeal against the acquittal of the respondent / accused and accordingly, an appeal is being filed on 15.10.2015, before the Madurai Bench of Madras High Court, Madurai.

15. Now, in this case, Judgment of acquittal was passed by the Trial Court on 30.09.2013. Copy application for certified copy of the order was filed only on 29.07.2015. After several official steps in the Court, finally certified copy of the Judgment was delivered on 29.07.2015. The learned Additional Public Prosecutor attached to the Additional Chief Judicial Magistrate Court, Madurai, gave his legal opinion on 29.04.2014. Thereafter, the Department, on 19.05.2014, wrote a letter to the next officials. Finally, the Secretary to the Government in the concerned Administrative Department wrote a letter stating that the Government has passed G.O., on 24.03.2015 stating that it is a fit case for appeal. Thereafter only, on 15.10.2015, appeal has been filed before this Court. It is pertinent to note here that in applying for copy of order, there was unreasonable and unexplained delay. That part, the Deputy Director sent a letter to the Government on 19.05.2014. However, only on 24.03.2015, the G.O., directing filing of appeal has been passed. Thus, it is seen that simply the file slept in the Secretariat and gathered dust.

16. In this backdrop of the matter, if we look at the reasons given in Para 2 of the affidavit filed by the official, it is seen that there is no explanation at all. The delay actually remain unexplained. There was no satisfactory reason or explanation for this huge delay. Now, we recall the observations of the Hon'ble Supreme Court in Balakrishnan (supra), which we have already stated and based upon which a learned single Judge of this Court in Senthil Kumar (supra) has dismissed the delay condonation petition.

17. In the facts and circumstances, the above decisions squarely applies to the facts of this case. There is no acceptable or even plausible reason to condone the huge delay. This is not a fit case that this Court should show any indulgence to the petitioner.

18. In view of the foregoing reasons, this miscellaneous petition deserves dismissal and it is hereby dismissed.