

The State of Bihar Vs. Baleshwar Kumar Ravi and anr.

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Court : Patna

Decided On : Jul-26-2006

Judge : Indu Prabha Singh and Sadanand Mukherjee, JJ.

Acts : Limitation Act - Sections 5 and 114 - Schedule - Article 114; Indian Penal Code (IPC) - Sections 34, 120B, 406, 408, 409, 419, 420, 467, 468 and 471; Code of Criminal Procedure (CrPC) - Sections 378, 378(1)(3), 378(4) and 378(5)

Appeal No. : Govt. Appeal (DB) No. 8 of 2005

Appellant : The State of Bihar

Respondent : Baleshwar Kumar Ravi and anr.

Advocate for Def. : Makardhwaj Upadhyay, Adv. for Respondent No. 2

Advocate for Pet/Ap. : Lala K.B. Prasad, APPK.M. Joseph and Hamanath Kumar, Advs.

Judgement :

S. Mukherjee, J.

1. This matter relates to an application under Section 5 of the Limitation Act on behalf of the appellant against the order and judgment dated 27.6.2005 passed in G.R. No. 698 of 2001/ Tr. No. 2650/2005 by Sri Saniay Kumar Singh. Sub. Divisional Judicial Magistrate. Patna, whereby the learned Judicial Magistrate bad

acquitted the respondent-accused Baleshwar Kumar Ravi for the offence under Sections 419, 420, 467, 468, 471, 120B/34 of the Indian Penal Code. It has been submitted that last date for filing Government appeal was 25.9.2005. The delay has been caused in the following manner.

2. It has been stated by the appellant that total time spent in obtaining the certified copy of the impugned judgment was 19 days inclusive of 7 days spent in obtaining first certified copy of the impugned judgment which on perusal was found to be defective and additional period of 12 days was spent in obtaining a correct certified copy of the judgment.

3. It has been submitted that the delay caused by the District Magistrate and the Public Prosecutor was on account of circumstances beyond control of the appellant. When remission of delay of 17 days in obtaining Proper certified copy is deducted then last date of filing comes to 14.10.2005. During the month following the judgment in the case. the Assistant Prosecuting Officer in the trial court was transferred out of Patna Civil Court and the next Assistant Prosecuting Officer had to spend long period to get acquainted with the case and study the records and judgment of the court to form conclusion about the need of appeal against the impugned judgment and after formulating the valid grounds of appeal the same was sent for recommendation to the government for filing appeal which was done on 26.8.2005 within the period of limitation.

4. The delay caused by the Government officials have been stated in details. Thereafter the Law Secretary after due consideration approved the proposal for filing the appeal against acquittal and the file was forwarded to the office of Advocate General on 11.11.2005 for filing appeal. The delay in getting the file processed in the government offices. Law Department and Secretariat have been elaborately mentioned. Notice was issued to the respondent No. 1 for his appearance. Respondent No. 1 has given reply to the limitation petition.

5. Objection has been raised by the respondent for entertaining application for grant of leave to appeal under Section 378(1) & (3) of the Code of Criminal Procedure, wherein and whereunder, the appellant- State of Bihar being aggrieved by the order of acquittal passed by Sri Sanjay Kumar Singh. S.D.J.M. Patna has prayed

for grant of leave and admit the appeal against the aforesaid part judgment and order of acquittal of respondent No. 1 in respect of charges under Sections 419, 420, 467, 468, 471, 120B of the Indian Penal Code and against respondent No. 2 under Sections 406, 408, 409, 419, 420, 467, 468, 471 and 120B of the Indian Penal Code.

6. The objection raised is based on the ground of limitation, in as much as, the present application for leave to file appeal against the judgment of acquittal was filed on 21.12.2005.

7. It has been submitted on behalf of the respondent that there is no explanation for filing of application for grant of leave to appeal against judgment of acquittal after the expiration of limitation of 60 days and therefore present application for grant of leave to appeal against judgment of acquittal is barred by limitation as prescribed under Section 378(5) of the Code of Criminal Procedure. It has been stated that the State has not annexed any document in support of statements made in the limitation petition and therefore serious prejudice has been caused to respondent No. 1.

8. In respect of principle of law, it has been submitted that leave to appeal against acquittal is granted in rare cases as it affects the liberty of the acquitted person. The present application for grant of leave to appeal against acquittal has been filed at the instance of the informant. It has also been submitted on behalf of respondent No. 1 that requisition for obtaining certified copy of the judgment was filed on 11.7.2005 and the same was delivered on 23.7.2005. whereas certified copy of the impugned order annexed with the application for grant of leave to appeal was applied on 11.8.2005 which was delivered on 23.8.2005. Respondent No. 2 has raised objection to the limitation petition stating that the limitation petition has been directed against only respondent No. 1. The entire limitation petition is connected with respondent No. 1 and not against this respondent and therefore it may be reasonably derived that the appeal is directed only against Balewhar Kumar Ravi, accused No. 1 and the Law Secretary had given approval for filing the appeal only against Baleshwar Kumar Ravi and not against this respondent. It was also contended on behalf of respondent No. 2 that the delay

has been explained to the extent of respondent No. 1. In this context it appears that the State of Bihar has filed this appeal on 21.12.2005.

9. On behalf of the appellant case reported in A.I.R. 2001. Page- 2924 (State Delhi Administration v. Dharampal) has been relied upon in which distinction has been made in between appeal filed under Section 378(4) and 378(5) of the Cr.P.C. It has been laid down as follows:

Section 378 makes a distinction between an appeal filed by the State Government or the Central Government who only need to obtain 'leave' and an appeal by a complainant who needs to obtain 'special leave'. The limitation provided in Sub section (5) is only in respect of applications under Sub-section (4) i.e. application for special leave to appeal by a complainant. A complainant may be either a public servant or a private party. If the complainant is a public servant then the period of limitation for an application for special leave is 6 months. If the complainant is a private party then the period of limitation for an application for special leave is 60 days. The period of 6 months and or 60 days do not apply to appeals by the State Government (under Sub section (1). Appeals by the State Government or the Central Government continue to be governed by Article 114 (a) of the Limitation Act. In Other words those appeals must be filed within 90 days from the date of the orders appealed from.

It was held thereunder that Sub section (5) of Section 378 of the Cr.P.C. has no applicatin to appeal filed by the State Government or the Central Government. Thus, it has been categorically laid down that period of 6 months and 60 days do not apply to appeals by the State Government or the Central Government. The appeals by the State Government or the Central Government continue to be governed by Article 114(a) of the Limitation Act. It has been laid down that the appeals by the State Government or the Central Government must be filed within 90 days from the date of the orders appealed from.

10. On behalf of the respondent however, the case reported in 1985 Criminal Law Journal page 536 (K.C. Saxena (AGA) v. Waiahat Hussain Khan) has been relied upon wherein on the point of provisions of law as laid down in Section 378(5) of the Cr.P.C it has been held that no application under Sub section (4) of Section

378 of the Cr.P.C. for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after expiry of six months, where the complainant is a public servant and 60 days in every other case computed from the date of that order of acquittal.

11. On behalf of respondent further a case reported in : 1981 CriLJ293 (Ajit Singh Thakur Singh and Anr. v. State of Gujarat) has been relied upon, wherein it has been laid down that sufficient cause must establish that because of some event or circumstance arising before limitation expired, it was not possible to file the appeal within time.

12. In this case the objection raised by the respondent is that delay is not condonable in view of Section 378(5) of Criminal Procedure Code and also the absence of sufficient cause. It has already been indicated above that in the appeals preferred by the State Government or Central Government Section 378(5) Cr.P.C. is not applicable and the same shall be governed by Section 114(a) of the Limitation Act. In this case appeal has been filed by the State Government. From the limitation petition it appears that the last date for filing the appeal was 25.9.2005 and as stated above sufficient cause has been shown for delay in filing the appeal in view of the processes of the Government. Even before expiry of period of limitation delay in processing the presentation of appeal has been explained by sufficient cause. It has been shown that the case was recommended by the Government for filing appeal on 26.8.2005. In the circumstances of the case, processes beyond 25.9.2005 cannot be held to be sufficient cause. As stated above, the delay in filing the appeal has been explained by sufficient cause.

13. In accordance with the prayer of the appellants, delay in filing the appeal is accordingly condoned. Appeal be placed for admission.