

Emperor Vs. Shiva Adar

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Court : Mumbai

Decided On : Jul-04-1907

Reported in : (1907)9BOMLR893

Judge : Chandavarkar and ;Heaton, JJ.

Appeal No. : Criminal Appeal No. 163 of 1907

Appellant : Emperor

Respondent : Shiva Adar

Disposition : Appeal dismissed

Judgement :

Chandavarkar, J.

1. We are of opinion that the appeal is barred by limitation, the period of six months prescribed in the Limitation Act having expired and it being more than one year since the case was disposed of in the Sessions Court. We have power to excuse the delay under Section 5 of the Limitation Act. That section ' gives the Courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words sufficient cause receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of

bona fides is imputable to the appellant' Krishna v. Ghatjiappan I L R (1889) Mad, 269 . The question, therefore, is whether there has been negligence or inaction in this case on the part of Government. The affidavit of the District Magistrate shows that he notified intention to move for an appeal against the acquittal at the time of hearing of the appeal of accused No. 2 to this Court. That appeal was filed in August 1906 and was dismissed ex parte on the 13th September 1906. This Court at the time of dismissing it passed an order that the record and proceedings in the case must be kept here for four months. The District Magistrate states in his affidavit that thereupon he moved the Government for sanction to appeal against the acquittal on the charge of murder but that his recommendations, not being very clearly expressed, were misunderstood by Government and they sanctioned an application for enhancement of sentence. The period of six months has been prescribed by the Legislature after taking into account the exigencies of official business and communication and it should not be enlarged merely because the District Magistrate did not express himself clearly in recommending to Government that there should be an appeal against the order of acquittal. That is not a sufficient cause for the delay on the part of Government in filing this appeal. ' Delay in the filing of an appeal ought not to be excused unless there are special circumstances, namely, a misleading by the other side, a mistake in the office itself or some sudden accident which could not be foreseen 'International Financial Society v. City of Moscow Gas Co. (1877) 7 Ch.D. 241 and In re Coles and Ravenshear (1907) 1 K.B. 1. For these reasons, we think, the appeal ought to be dismissed as being beyond time.