

State Vs. Vijay Kumar and ors.

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Court : Delhi

Decided On : Jul-20-1988

Reported in : 1989(2)Crimes546; 37(1989)DLT16

Judge : Charanjit Talwar and; M.K. Chawla, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 378(5)

Appeal No. : Civil Revision Appeal No. 169 of 1986 and Criminal Miscellaneous Appeal No. 30 of 1986

Appellant : State

Respondent : Vijay Kumar and ors.

Advocate for Def. : Mr. Bakshi, Mr. Mathur

Advocate for Pet/Ap. : K.K. Bakshi and ; D.C. Mathur, Advs

Judgement :

Charanjit Talwar, J.

(1) A preliminary objection to the maintainability of this appeal by which acquittal of the respondents is sought to be set aside has been raised. The plea is that the appeal is time barred.

(2) The application seeking leave to appeal (Cr. M.No 30 of 1986) was filed on July 9, 1986. The grounds of appeal also dated July 9 1986 were filed along with the said application. On an objection raised by the Registry that the appeal was filed after the period of limitation Cr.M Application No. 30-A of 1986 was filed by the State on August 19 1986 As no affidavit in support of the application had been filed, it was returned to the counsel. The application was refiled on September 1, 1986. It was placed for hearing on November 10, 1986. The following order was passed thereon:- 'Let the application be registered. Delay is condoned subject to just exceptions, if any.' Leave to appeal was granted and the appeal was admitted. It was further directed that the appeal be heard along with Cri. Appeal No. 177 of 1985, entitled Dinesh Kumar v. State.

(3) On July 19, 1988, Mr. Mullah, learned counsel for the appellant in connected appeal (Dinesh Kumar v. State) addressed us. Mr. Bakshi, learned counsel for the respondent (State) also made submissions. It was at that stage Mr. Mathur, learned counsel for the respondent in Cr. Appeal No. 169 of 1986 pointed out that the appeal filed by the State was hopelessly barred by time. To appreciate his contention, it is necessary to notice certain relevant dates.

(4) The impugned judgment was passed on July 26, 1985. The State filed the application for seeking certified copy on August 13, 1985. It is averred in Cr. M.No. 30-A of 1985 that the said application was returned by the Copying Agency on October 8, 1985 as the records of the case had been forwarded to this Court (presumably because of the pendency of Cr. Appeal No. 177 of 1985). It is the case of the applicant that the said application was re-filed in the Copying Agency of the Sessions Court on October 24, 1985 as it was found that the record was still with that Court and not with the High Court. That application was returned on April 15 1986 with the remarks that the record had in fact been sent to the High Court by then. The application dated April 17, 1986 for obtaining the certified copy of the judgment was then moved in this Court on April 19, 1986. The copy was ready on May 2, 1986 but was taken delivery on May 3, 1986, The application seeking leave to appeal (Cr. M. No. 30/86) was filed on July 9, 1986.

(5) According to the applicant's own showing the State took 244 days in obtaining the certified copy. From the dates which have been quoted above, the time spent by the State in obtaining the certified copy is as follows :-

Month	No- of days
August, 1985	18
September, 1985	30
October, 1985	8+8
November, 1985	30
December, 1985	31
January, 1986	31
February, 1986	28
March, 1986	31
April, 1986	15
May, 1986	12
Total	244

(6) Assuming for the sake of arguments that the time so spent can be deducted from the period of limitation, even then the application seeking leave to appeal 'Cr. M.No. 30 of 1986) was filed after 104 days of passing of the impugned order and, therefore, the application was filed beyond the period of limitation. As we have noticed, this is as per the showing of the State.

(7) Mr. Mathur, learned counsel for the respondent however, contest the proposition that the period in obtaining the certified copy was 244 days, as claimed by the State. He submits that the period from October 8, 1985, i.e., the date on which the application made by the State to the Copying Agency was returned, up to April 19, 1986, the date on which a fresh application was made in the Registry of this Court, cannot be excluded. He has drawn our attention to the fact there is no endorsement by the Registry of this Court on the application which was admittedly returned to the applicant on October, 8, 1985 that it (the application) was ever filed in this Court. The State knowing fully well that the record was not in the Sessions Court, re-filed it on October 24, 1985 in the Copying Agency of the trial court. It had naturally to be returned by the said Agency and was in fact returned on April 15, 1986. Mr. Mathur further submits that while applying for the certified copy in the Registry of this court, the applicant has to deposit some amount towards the cost of the certified copy. There is no allegation, he urges, that such an amount was ever deposited or even a receipt obtained for obtaining the certified copy. We are inclined to agree with him that in the facts and circumstances of the case, the period with effect from October 9, 1985 to April 19, 1986, the date on which the fresh application was made in this Court cannot be excluded. Thus the application seeking leave to appeal has been filed not 14 days beyond the period of limitation, as alleged by Mr. Bakshi, but it was filed beyond 207 days.

(8) In the application, there is no Explanationn even for filing Cr.Misc.30ofl986 late by 14 days. As we have observed, infact it was filed after 207 days of expiry of the period of limitation.

(9) The application (Cr. Misc. No. 30/86) being time barred and the delay not having been explained at all, it has to be held that the application for leave to appeal was filed beyond the period of limitation and, thereforee, the leave to appeal could not be granted. As noticed at the outset, the application was allowed subject to just exceptions. The respondent has shown sufficient exception to the grant of the application. We are satisfied that the application for condensation of delay has no merit and it is liable to be dismissed. We order accordingly.

(10) The result is that the appeal being time barred could not have been entertained. It is dismissed accordingly.

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