

State of Delhi Vs. Subhash Chand

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Court : Delhi

Decided On : Jan-08-2001

Reported in : 2002IIIAD(Delhi)915; 96(2002)DLT212

Judge : B.A. Khan and; V.S. Aggarwal, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 378, 378(1), (2), (4) and (5); Limitation Act - Schedule - Article 114

Appeal No. : Crl. Appeal No. 38/2001

Appellant : State of Delhi

Respondent : Subhash Chand

Advocate for Def. : Asha Tiwari, Adv.

Advocate for Pet/Ap. : Mukta Gupta, Adv

Disposition : Application dismissed

Judgement :

Khan, (J)

1. This appeal is said to be delayed by 136 days and appellant had not even chosen to seek condensation. Confronted with this L/C for appellant sought to justify the delay by falling back upon provisions of Section 378 (5) Cr.P.C. which

prescribed six months limitation period for filing acquittal appeal by a public servant complainant in cases instituted upon a complaint. This provision, according to her, provided six months to appellant to file the present appeal which had also emanated from a complaint and was thus filed within time.

2. L/C for respondents, however, repelled this to claim that Acquittal Appeal of State was to be filed within 90 days from the date of acquittal order Under Article 114 of the Limitation Act. She sought support for this from Supreme Court judgment in 'State v. Dharampal : 2001 CriLJ4748 '.

3. The relevant provision reads thus:-

'378 (4) if such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complaint may present such an appeal to the High court.

(5) No application under Sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.'

4. Section 378 authorise the State to direct the public prosecutor to present an appeal to High Court against any original or appellate acquittal order passed by any court other than High Court or an acquittal order passed by Sessions Court in revision. Such appeal is not, however, entertainable save otherwise than with the leave of High Court. Sub-section (4) also permits a complainant to file such appeal in a case instituted upon a complaint with the special leave of the High Court. It's Sub-section (5) provides a limitation period for this laying down that no such special leave application shall be entertained after six months from the date of acquittal order where complainant is a public servant and sixty days in every other case. Two limitation periods are thus provided i.e.-

six months for public servant complaints and 60 days for other complaints.

5. It is this provision which is being invoked by State counsel, Ms. Mukta Gupta to justify the delayed filing of special leave application. She firstly believes that present application was filed by public servant complainant perhaps meaning the State through public prosecutor and since it arose out of a complaint, it was liable to be filed within six months and was thus within time.

6. We find it difficult to go with this line of reasoning and the interpretation sought to be placed on the provision which when read in totality and proper context makes a clear out distinction between the State appeal and that of a complainant in cases instituted upon a complaint. Sub-sections (1) and (2) of Section 378 confer right of appeal against an acquittal order on the State for which limitation period of 90 days is provided under Article 114 of Limitation Act and Sub-section (4) on the complainant in cases instituted upon a complaint. It becomes difficult to accept that State could enjoy best of both worlds and transplant itself as complainant under Sub-section (4) also to benefit from 6 months limitation period. It would be doing violence to the provisions of Section 378 to conclude so. This finds support from the Supreme Court judgment in *State v. Dharampal* : 2001 CriLJ4748 ' wherein it was held that:-

'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 order appealed from.'

7. We accordingly hold that three limitation periods are prescribed for filing of acquittal appeals. It is 90 days for State appeals under Article 114 of Limitation Act. Sixty days for those to be filed by complaint and six months for complainant public servant under Section 378(5) Cr.P.C. in cases instituted upon complaint.

8. The present application for leave to appeal has been admittedly filed by the State. It would therefore be governed by Article 114 of Limitation Act and was required to be filed within 90 days from the date of acquittal order. Since it was filed 136 days after the expiry of prescribed limitation period and no condensation was sought, application is dismissed and appeal held time barred.

