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Court : Delhi

Decided On : Aug-25-2006

Reported in : 2006(91)DRJ567

Judge : Manmohan Sarin and; Manju Goel, JJ.

Acts : Limitation Act - Sections 5; Indian Penal Code (IPC) - Sections 34, 302 and 307

Appeal No. : Crl. M.A. 1025/2001 in Crl. M. 2399/2001 and 2400/2001

Appellant : State

Respondent : Vijender Singh and ors.

Advocate for Def. : Sushil Bajaj, Adv.

Advocate for Pet/Ap. : Mukta Gupta, PP and; Rajat Katyal, Adv

Judgement :

Manju Goel, J.

1. State's application for leave to appeal against acquittal dated 27.3.2001 in S.C. No. 258/1996; FIR 71/1988 for offences under Section 302 read with Section 34 IPC and Section 307 read with Section 34 IPC was presented on 28.8.2001. The same was returned by the Registry which required a copy of the impugned order.

After removing the objection, the application for leave to appeal was filed on 24.9.2001. The present CrI. M.A. No. 1025/2002 for condoning the delay in presentation of the application for leave is presented on 7.3.2002. The application is opposed on behalf of the respondents.

2. Two questions are involved in this application for condonation of delay. The first is whether sufficient ground for condonation of delay has been made out and, secondly, whether the application for condonation of delay, which itself is delayed for not having been filed along With the application for leave to appeal, can be entertained. Let us take the first question first. The facts explaining the delay are as under:

The APP submitted his opinion on the impugned judgment on 27.3.2001 and thereafter the PP agreeing with the view of the APP forwarded the file to the Director of Prosecution on 1.5.2001. The Director of Prosecution agreeing with the views of APP and PP forwarded the file then to the Secretary (L&J;) on 14.5.2001. The Secretary on his part examined the matter and then forwarded the file to the Competent Authority namely the Lieutenant Governor of Delhi through the Chief Secretary and Chief Minister of Delhi. The file was returned to the Director of Prosecution with the approval of the Competent Authority on 13.6.2001. The Director of Prosecution sent the file to the SDM, Saraswati Vihar, who forwarded the same to the office of the standing counsel on 9.7.2001. The appeal was prepared and filed on 28.8.2001. By then, the appeal was already delayed by 62 days.

3. In reply it is contended that no sufficient ground for condonation of delay is made out in the application inasmuch as there is no explanation as to why it took so long for the matter to be considered at every stage. Whether the procedure involved in filing an appeal against acquittal as detailed above could give a ground for condonation of delay has been considered by this Court in a very recent judgment in the case of State v. Suresh Kumar CrI. M. Nos. 1624/02 & 57/04 in CrI.L.P.52/2002 and certain other cases disposed of by a common judgment. This judgment delivered on 15.10.2004 was on the point as to whether delay in preferring an appeal could be condoned. This Court then noted the procedure

involved as described above and taking into consideration Supreme Court's judgments in the cases of Shankuntala Devi Jain v. Kuntal Kumari and Ors. : AIR 1969 SC 575; New India Insurance Co. Ltd. v. Smt. Shanti Misra : AIR 1976 SC 237; State of Kerala v. E.K. Kuriyipe and Ors. : 1981 (Supp.) SCC 72; O.P. Kathpalia v. Lakhmir Singh and Ors. : (1984) 4 SCC 66; Collector, Land Acquisition, Anantnag and Anr. v. Mst. Kattfi and Ors. : (1987) 2 SCC 107; G. Ramegowda, Major and Ors. v. Special Land Acquisition Officer, Bangalore : (1988) 2 SCC 142; State of Haryana v. Chandra Mani and Ors. : (1996) 3 SCC 132; Bikram Dass v. Financial Commissioner and Ors. : AIR 77 SC 2221; and Indian Statistical Institute v. M/s Associated Builders and Ors. AIR 78 SC 335, condoned the delay in presenting appeals before it. The delay under consideration in those matters ranged between 66 days to 450 days. In all those matters the delay in refiling the papers varied between 174 days to 1015 days. The Court began with the observation that 'sufficient cause' should receive a liberal construction so as to avoid mis-carriage of justice and to do substantial justice and proceeded to observe that while the law of limitation was the same for a private citizen as for Government authorities yet somewhat different considerations arise when a request for condonation is made by/or on behalf of the Government and that factors which are peculiar and characteristic for functioning of the Government would call for a certain amount of latitude. A pragmatic and justice-oriented approach was found to be the right way for examining such requests. The refreshing departure from the beaten track is justified in that judgment by considerations of public interest, which the Court observed cannot suffer because of indolence, inaction or negligence of any official in the Government regardless of whether the same arises out of a bona fide error of judgment, lethargy or corrupt motives. It was observed that dismissal of a cause otherwise than on merits may, in certain situations, amount to playing in the hands of such elements as are either disinterested in protecting public interest or deliberately work against the same by avoiding to take a decision where the same ought to be taken quickly.

4. The inordinate delay that was caused in presentation of the appeal and the other cases were caused by two factors. The first was the procedure as described above which required the file to be routed through various departments of the Government before the appeal could finally be presented to the Court. The second

was delay caused on account of negligent filing of these matters in the office of the standing counsel on account of which the files in those matters remained unnoticed for months and years together. Fortunately, in the present case, the second ground is not being pleaded. The delay of 62 days is explained by saying that the length of the procedure involved was the sheer cause of delay. The Court in the matter of State v. Suresh Kumar and Ors. in CrI. M. Nos. 1624/02 & 57/04 in CrI. L.P. No. 52/2002 condoned the delay caused on both the counts. The delay in the first file as well as in subsequent file caused by mishandling of papers was also condoned albeit with certain suggestions to the Registry to be observed in the matter of refiling of papers and delay in the same. It has been stated at the bar that an SLP filed from this judgment stands dismissed.

5. We find no reason to differ with the judgment in the case of State v. Suresh Kumar and Ors. (supra). In fact, the delay in the present case is far less than those which were condoned in the aforesaid matters.

6. However, before the delay can be condoned, the second question now requires to be addressed. What is contended by the respondent is that the application for condonation of delay should have been filed along with an application for leave to appeal and the application filed after almost six months of refiling of the appeal cannot be considered. It is certainly ideal that an application for condonation of delay be presented along with the appeal/application for leave to appeal. That has not taken place in this case. The application for condonation of delay is itself delayed. But the delay has been explained. The ground for condonation of delay appears to be cogent to us. Till the Supreme Court judgment in the case of State (Delhi Administration) v. Dharampal : 2001 (10) SCC 372 the Registry of this Court has been counting the period of limitation for presenting an appeal against acquittal as 180 days instead of 90 days and when the present appeal was filed, the Registry under that mistaken concept of limitation did not raise any objection regarding limitation. Although the Registry returned the appeal with the objection regarding the copy of the impugned judgment, it raised no objection regarding limitation. The fact that 190 days having passed, a delay had already occurred was also lost sight of by the registry. The prosecution relies upon the judgment of the Supreme Court in the case of Uday Bhan Gupta v. Hari Shankar Bansal and

Ors. AIR 1984 SC 1469 in which the Supreme Court observed that the Registry ought to point out the defect of limitation which would require an appellant to seek the condonation of delay and if such an objection is not taken by the Registry, it would not be proper for the High Court to proceed to entertain the objection as to limitation. This precisely is the case in hand. The subsequent filing of the application for condonation of delay is not an insurmountable defect. In a similar situation in the case of Ravindra Jain v. Natraj Albums Industries (Pvt.) Ltd. : 1996 (39) DRJ (DB) 512, this Court laid down that an application under Section 5 of the Limitation Act cannot be refused because it was not filed simultaneously with the memo of appeal. There is no reason to take a different view. The above analysis leads us to a conclusion that the delay in presentation of the application for leave to appeal should be condoned and we do so accordingly. Before ending, however, we must clarify that this judgment should not be read enlarging the period of limitation for all State appeals. The State must make an earnest endeavour to quicken the process in presentation of appeals against acquittals. One of the ways in which the same can be done is to reduce the number of authorities and departments involved in the decision making process.

7. We have been assured by the standing counsel that the loopholes have been plugged and the system of presentation of appeals has been streamlined. The State must do all that is possible to overcome the inefficiency and lethargy as well as lack of accountability in these matters of different officers involved in causing avoidable delays in presenting a State appeal because such delays would help only those criminals for whom the system has been put in place to check and control.

8. Application stands disposed of.