

**Ranadevan Vs. the State**

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**Court :** Kerala

**Decided On :** Nov-08-1985

**Reported in :** 1987CriLJ13

**Judge :** S. Padmabhan, J.

**Appellant :** Ranadevan

**Respondent :** The State

**Judgement :**

ORDER

**S. Padmabhan, J.**

1. In C.C. No. 362 of 1980 the revision petitioner was prosecuted before the Chief Judicial Magistrate, Trichur for having committed offences punishable Under Sections 332, 448 and 426 of the Indian Penal Code. The allegation against him was that on 1-9-1980 at about 4.30 p.m. he voluntarily caused hurt to P.W. 1, a Police Constable, in the discharge of his official duties, with intent to prevent or deter him from discharging his duties. The revision petitioner is alleged to have pelted stones at the police constable and trespassed into a tea shop where he committed mischief by breaking a photo that was hanging on the wall. After taking evidence the magistrate found him guilty on all the counts. For the offence Under Section 332 he was sentenced to rigorous imprisonment for six months. Under Section 448 of the I.P.C. the sentence awarded was rigorous imprisonment for two

months. For offence Under Section 426 IPC he was awarded rigorous imprisonment for one month. These sentences were allowed to be suffered concurrently.

2. The judgment was pronounced on 23-4-1982. The revision petitioner was defended before the Chief Judicial Magistrate by an advocate by name Pushpangadan practising at Trichur. It is said that the Criminal Revision Petitioner was not happy with his performance as his advocate. When the case ended in conviction the revision petitioner became more dissatisfied and wanted to change the Counsel. Therefore, he entrusted the case records with another advocate by name Premachandran with instructions to file the Criminal Appeal before the Sessions Judge, Trichur. Accordingly advocate Mr. Premachandran requested th'e Chief Judicial Magistrate to furnish him with a free copy of the judgment enabling him to file an appeal on behalf of his client against the conviction and sentence. By that time advocate Mr. Pushpangadan had already received a free copy of the judgment from the Chief Judicial Magistrate and filed Crl. Appeal No. 69 of 1982 before the Sessions Judge, Trichur against the conviction and sentence. The revision petitioner and his new counsel Mr. Premachandran were not aware of this development. Sri. Premachandran was supplied with a free copy of the judgment by the Chief Judicial Magistrate only on 27-5-1982/Without knowing the fact that an earlier appeal has been filed by advocate Sri. Pushpangadan Crl. Appeal No. 72 of 1982 was filed by advocate Sri. Premachandran on 27-5-1982 itself.

3. When the Sessions Judge noticed the fact that two appeals were filed by two different advocates from the conviction and sentence against the same accused in the same case, an enquiry was conducted and statements were recorded. As a result of the enquiry the Sessions Judge came to the conclusion that Criminal Appeal No. 69 of 1982 was filed by advocate Mr. Pushpangadan without instructions from the client. On that ground, though the appeal was within time it was dismissed. When Criminal Appeal No. 72 of 1982 was taken up that was found to be out of time and without going into the merits as to how the delay was occasioned the Sessions Judge dismissed Crl. Appeal No. 72 of 1982 on the ground of limitation. It is against the said dismissal that the accused had come up in revision.

4. Whether there was sufficient ground for condonation of delay Under Section 5 of the Limitation Act was not at all considered by the Sessions Judge on the merits. That aspect was not considered on the ground that without an application for condonation of delay it is not necessary to consider that matter. To put it otherwise the Sessions Judge went under the impression that it is a condition precedent for condonation of delay that an application for that purpose must be filed by the person who wants the delay to be condoned by court. This aspect of the matter came up for consideration in *Nadubhagom N.S.S. Karayogam v. Gopalan Nair* 1979 Ker LT 166. It was held:

Section 5 of the Limitation Act does not state that delay can be condoned only on an application filed for that purpose. On the other hand authorities are to the effect that no formal application is necessary for a court to exercise its power Under Section 5 of the Limitation Act. It is significant to note that under the new Civil Procedure Code, specific mention is made in the case of appeals about the necessity to file an application for condoning delay as will be seen from Order 41 Rule 3A. There is no such provision in the case of application for revision.

In the light of the above principles, the Sessions Judge, even without an application for that purpose, ought to have considered whether there was sufficient ground for condoning the delay in preferring the Criminal Appeal.

5. Courts are existing for dispensation of justice and not for its denial on technical grounds. That is so especially in a criminal proceeding where a man has been convicted resulting in negation of his fundamental rights. When there are materials before the court to come to the conclusion that the delay was not occasioned by the purposeful laches of the appellant, but due to reasons beyond his control, the court ought to have considered that aspect of the matter - instead of dismissing the appeal on the ground that a formal application has not been filed. The Sessions Judge himself found that .Sri. Pushpangadan who was the former advocate had no authority to file the criminal appeal on behalf of the revision petitioner. When the Sessions Judge entered such a finding the conclusion is that the former Advocate acted unauthorisedly in getting a free copy of the judgment from court. The new counsel engaged by the revision petitioner admittedly

approached the Chief Judicial Magistrate for getting a free copy of the judgment without being apprised of the fact that another counsel received a copy and already filed an appeal. From the records it is further clear that the revision petitioner was also not aware of the receipt of the copy and the filing of the appeal by the former counsel. Even though Sri. Premachandran made a request on behalf of the revision petitioner for getting free copy of the judgment for the purpose of filing an appeal, the copy was made available only on 27-5-1982. On that day itself the appeal was also filed. It has further to be noted that the earlier appeal filed in time was dismissed by the Sessions Judge himself on the ground that it was without instructions. Under such circumstances the facts were capable of speaking for themselves to satisfy the Sessions Judge that this is a fit case in which the delay had to be condoned.

6. In the above circumstances the delay in filing Criminal Appeal No. 72 of 1982 before the Sessions Judge, Trichur is hereby condoned and the judgment of the Sessions Judge in Criminal Appeal No. 72 of 1982 dismissing the appeal on the ground of delay is set aside. The appeal is sent back to the Sessions Judge, Trichur for hearing and disposal on the merits according to law.

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