

**Ouso Vs. Cheekku**

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**Court :** Kerala

**Decided On :** Nov-22-2006

**Reported in :** 2007CriLJ2391; 2007(1)KLT61

**Judge :** K.T. Sankaran, J.

**Acts :** Kerala Practice Criminal Rules, 1982 - Rules 102, 109, 240, 241 and 242; Practice Civil Rules - Rule 254; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 240, 353, 363, 363(1), 363(2), 382, 387 and 397; Limitation Act - Sections 12 and 12(2)

**Appeal No. :** Unnumbered Cri. R.P. of 2006

**Appellant :** Ouso

**Respondent :** Cheekku

**Advocate for Def. :** Public Prosecutor

**Advocate for Pet/Ap. :** S. Rajeev, Adv.

**Judgement :**

ORDER

**K.T. Sankaran, J.**

1. This Crl. R.P. filed by the accused was not numbered by the Registry, taking the view that the revision is barred by limitation. The counsel for the petitioner submitted in reply to the note made by the Registry that there is no delay and the revision was filed within 90 days from the date of receipt of the free copy of the judgment in the Crl. Appeal. The Registry was not satisfied with this reply. It was noted that the free copy of the judgment dated 28.7.2006 was issued on 11.10.2006 and the date when copy was ready is not mentioned in the judgment.

2. The judgment was pronounced on 20th July, 2006. The only endorsement on the judgment is that the free copy was issued on 11.10.2006. The revision was filed on 14.11.2006. The learned Counsel for the petitioner submits that limitation is to be reckoned from the date of issue of the free copy and not from the date of judgment.

3. Section 363 of the Code of Criminal Procedure provides for issue of copy of judgment to the accused. Sub-sections (1) and (2) of Section 363 are relevant in this context which read as follows:

(1) When the accused is sentenced to imprisonment, a copy of the judgment shall, immediately after the pronouncement of the judgment, be given to him free of cost.

(2) On the application of the accused, a certified copy of the judgment, or when he so desires, a translation in his own language if practicable or in the language of the Court, shall be given to him without delay, and such copy shall, in every case where the judgment is appealable by the accused be given free of cost:

Provided that where a sentence of death is passed or confirmed by the High Court, a certified copy of the judgment shall be immediately given to the accused free of cost whether or not he applies for the same.

Sub-section

(1) of Section 363 provides for the issue of a copy of the judgment to the accused free of cost immediately after pronouncement of the judgment. Sub-section

(2) of Section 363 provides for issue of a certified copy on the application of the accused. The certified copy to be issued under Sub-section

(2) is also free of cost, provided, the judgment is appealable by the accused. The proviso to Sub-section

(2) states that where a sentence of death is passed or confirmed by the High Court, a certified copy of the judgment shall be immediately given to the accused free of cost whether or not he applies for the same. A combined reading of Sub-sections

(1) and

(2) would show that where the accused is sentenced to imprisonment, the court is bound to give a copy of the judgment free of cost to the accused immediately after pronouncement of the judgment. The certified copy to be issued to the accused on his application under Sub-section

(2) need not necessarily be in a case where he is sentenced to imprisonment. But if such certified copy is for the purpose of filing an appeal by the accused, it shall be given free of cost. The difference between a copy to be given under Sub-section

(1) and Sub-section

(2) is that in the former, no application is necessary whereas in the latter, an application is necessary unless the judgment is by the High Court where a sentence of death is passed or confirmed. Section 363 occurs in Chapter XXVII, the heading being 'the judgment'. Section 353 and the other sections in Chapter XXVII would indicate that the judgment referred to in those Sections is judgment passed by the trial court. Therefore, Section 363, on its strict interpretation, could be considered as relating to judgment passed by the trial court. Section 387 of the Code of Criminal Procedure provides that the rules contained in Chapter XXVII as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment in appeal of a court of Session or Chief Judicial Magistrate. Rule 109 of the Criminal Rules of Practice states that the

appellate court shall, when it confirms or awards a sentence of imprisonment, furnish a copy of its judgment to the accused free of cost. Section 382 of the Code of Criminal Procedure provides that every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall be accompanied by a copy of the judgment or order appealed against, unless the court to which it is presented otherwise directs. Section 382 does not mandate that the appeal shall be accompanied by a certified copy of the judgment. Any copy of the judgment including a 'free copy' issued under Section 363(1) could be used for presentation of appeal under Section 382 of the Code. A 'free copy' issued under Section 363(1) is also a certified copy, since it is issued under seal of the court and certifying it as a true copy. Section 397 of the Code does not contain a provision as contained in Section 382 for production of a copy of the judgment. Rule 102 of the Criminal Rules of Practice states that every Memorandum of Appeal or Revision Petition shall be accompanied by a certified copy of the judgment or order of the court appealed against or sought to be revised.

4. An appeal or revision shall be filed within the period of limitation provided under the Limitation Act. Section 12 of the Limitation Act provides for exclusion of time taken for obtaining certified copy of the judgment. Section 12(2) of the Limitation Act reads thus : 'In computing the period of limitation for any appeal or application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded'. When an application is made for certified copy of a judgment, decree or order, the Rules of Practice (Civil Rules of Practice and Criminal Rules of Practice, as the case may be) provides for the manner in which the certified copies are to be issued. Rule 240 of the Criminal Rules of Practice, Kerala, 1982, states that every copy shall bear an endorsement initialed by the head clerk or other officer appointed for the purpose showing the particulars mentioned in Rule 240 namely '(1) name of the court,

(2) year and number of the case or other proceedings

- (3) name of the applicant
- (4) the number and date of application
- (5) date of calling for stamp papers
- (6) date of production of stamp papers
- (7) date of calling for additional stamp papers
- (8) date of production of additional stamp papers
- (9) date when copy made ready
- (10) date notified for appearance to receive the copy; and

(11) date of delivery of copy'. A similar provision is contained in Rule 254 of the Civil Rules of Practice. It could be said that Rule 240 of the Criminal Rules of Practice applies only to certified copies and not to 'free copy' issued under Section 363(1) of the Code of Criminal Procedure, since Chapter XX of the Criminal Rules of Practice in which Section 240 occurs is named 'certified copies'. But Rule 240 only says 'copy' and not 'certified copy'. It is also possible to contend that the Rule 240 of the Criminal Rules of Practice does not apply to 'free copy' issued under Section 363(1), since the endorsements to be made as provided Rule 240 include the endorsements regarding calling for stamp papers, whereas in the case of a free copy there is no necessity to provide stamp paper. If Rule 240 does not apply to 'free copy', it can be said that there is no provision in the Criminal Rules of Practice providing for any endorsement to be made on a free copy issued under Section 363(1) of the Code of Criminal Procedure. If that is so, how could one compute the period of limitation with reference to a free copy issued under Section 363

(1) of Criminal Procedure Code, if such copy was not issued on the date on which the judgment was pronounced? It could be said that Section 363(1) mandates that free copy shall be issued immediately after the pronouncement of the judgment. But in actual practice, and judicial notice can be taken of it, free copies are not being issued in all cases on the date on which judgments are pronounced. Copy of

the judgment in the present case itself proves that free copy was issued only after 2 1/2 months of the date of pronouncement of the judgment. In what manner the period of limitation is to be computed and in what manner it is to be found out whether an appeal or revision is filed within time, if necessary endorsements are not available? If that is to be done effectively and correctly, at least the last three endorsements mentioned in Rule 240 of the Criminal Rules of Practice are essential. These requirements are

- (1) the date when the copy was made ready,
- (2) the date notified for appearance to receive the copy and
- (3) the date of delivery of the copy.

5. Rules 241 and 242 of the Criminal Rules of Practice, Kerala, 1982, are also relevant in this context, which read as follows:

241. Intimation of date for delivery of copy : The Head Clerk shall fix a date for the appearance of the applicant to receive the copy and notify the name on the notice board of the court or his section. If the copy is not ready for delivery on the date so fixed, the Head Clerk shall fix another day therefore and notify the same in a like manner on or before the date originally fixed for the delivery of the copy.

242. Delivery of copies: - A list of copies ready for delivery shall be pasted on the notice board and shall remain thereon for three days and if the last day is a holiday till the next working day.

I am of the view that Rules 241 and 242 shall be followed, mutatis mutandis, in the case of a copy to be issued under Section 363 of the Code of Criminal Procedure as well, if copy is not given to the accused immediately after pronouncement of the judgment as provided in Section 363(1) of the Code of Criminal Procedure.

6. In the case on hand, as already stated, there is no endorsement on the copy of the judgment to indicate the date when copy was ready and the date which was notified to receive the copy. Therefore, it is not possible to compute the period of limitation correctly. In computing the period of limitation, it is not the ideal lesser

time that is relevant. If the last date for filing of the revision is to be computed, there could be only one last date and that date could be found out only with reference to the relevant dates endorsed on the copy of the judgment.

7. In the present case, if the petitioner says that the free copy was issued on 11.10.2006 because it was made ready only on 11.10.2006, nobody can controvert it with reference to the endorsements on the copy of the judgment, because no endorsements are available on the copy. If he says that the date on which the copy was to be delivered was not notified, nobody can say that he is not right. Absence of the necessary endorsements on the copy of the judgment making it practically impossible for the revisional court to compute the period of limitation is not due to the fault of the revision petitioner. It is a mistake committed by the court and not by the party. The party cannot be penalized for the fault of the court.

In these circumstances, I hold that the revision is not barred by limitation. The Registry will number the revision and list it for admission.

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