

Panchi Nath Vs. State

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Court : Rajasthan

Decided On : Oct-21-2005

Reported in : 2006CriLJ361; RLW2006(2)Raj1357; 2005(4)WLC790

Judge : Narendra Kumar Jain, J.

Acts : Wild Life Protection Act, 1972 - Sections 9; [Limitation Act, 1963](#) - Sections 5; Code of Criminal Procedure (CrPC) , 1974 - Sections 374, 397 and 401

Appeal No. : Cri. R.P. No. 752 of 2005

Appellant : Panchi Nath

Respondent : State

Advocate for Def. : B.K. Sharma, P.P.

Advocate for Pet/Ap. : J.S. Chauhan, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Narendra Kumar Jain, J.

1. This revision petition under Section 397/401, Cr. P. C. is directed against the

JUDGMENT / ORDER

dated 3-6-2005 passed by the District & Sessions Judge, Baran dismissing the appeal of the petitioner under Section 374, Cr. P. C. on the ground of limitation against the order dated 4-5-2005 passed by the Civil Judge (Jr. Divn.) & Judicial Magistrate, Kishanganj, District Baran, whereby the petitioner was convicted and sentenced under Section 9, Schedule-II 2/51 of the Wild Life Protection Act, 1972 to one year rigorous imprisonment and a fine of Rs. 300/- and in default of payment of fine, to further undergo for one month rigorous imprisonment.

2. I have heard learned Counsel for the petitioner, learned Public Prosecutor and examined the impugned orders as well as records of the courts below.

3. Learned counsel for the petitioner contended that the trial Court convicted and sentenced the accused appellant vide order/ judgment dated 4-5-2005 and no application for suspension of sentence was moved on his behalf on the same day in the trial Court, therefore, he was sent to the judicial custody on the same day. The petitioner in these circumstances could not inform his family members and could not file the appeal before the District & Sessions Judge well in time and as such an application under Section 5 of the Limitation Act was preferred along with appeal for condonation of delay in filing the appeal. It was contended in the application under Section 5 of the Limitation Act that the petitioner was sent to judicial custody on 4-5-2005 itself and when his son came to know about it, then he arranged the money for expenses to be incurred in filing the appeal and he came on 21-6-2005 and applied for certified copy of the judgment and filed the appeal on 28-6-2005, therefore, there was about 25 days delay in filing the appeal. He further contended that reasons given for condonation of delay was sufficient and delay ought to have been condoned, but the learned appellate Court committed an illegality in dismissing the application under Section 5 of the Limitation Act as well as appeal itself being barred by period of limitation.

4. Learned Public Prosecutor opposes the revision petition.

5. I have considered the rival submissions as well as records of both the courts below. The order-sheet of the trial Court dated 4-5-2005 shows that the petitioner

was sent to the judicial custody on the same day, therefore, this fact is correct from the record itself. The delay in filing the appeal was only 25 days. The right of an appeal is a statutory, important and valuable right of an accused person particularly in criminal cases where a question of conviction and sentence is involved and in such matters, the provisions of Section 5 of the Limitation Act should be construed liberally. The explanation for delay in filing the appeal in the present case was sufficient and it was a fit case wherein the delay ought to have been condoned. In these circumstances, the judgment of the learned District & Sessions Judge, Baran cannot be sustained and the same is liable to be set aside.

6. Consequently, I allow this revision petition and set aside the impugned judgment dated 30-6-2005 passed by the District & Sessions Judge, Baran. The application under Section 5 of the Limitation Act filed by the petitioner for condonation of delay in filing the appeal before the District & Sessions Judge, Baran is allowed. The matter is remanded back to the District & Sessions Judge, Baran for deciding the appeal of the petitioner against the judgment dated 4-5-2005, on merits.

7. The records of the Courts below be sent back immediately.

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