

Smt. Krishna Devi Vs. Dina Ram

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Court : Himachal Pradesh

Decided On : Apr-11-2008

Reported in : 2008CriLJ3122,2008(2)ShimLC152

Judge : Kuldip Singh, J.

Appellant : Smt. Krishna Devi

Respondent : Dina Ram

Disposition : Application dismissed

Judgement :

ORDER

Kuldip Singh, J.

1. This is an application, under Section 5 of the Limitation Act read with Section 482 of the Code of Criminal Procedure (for short, the Code) for condonation of delay in filing an application seeking leave to file an appeal under Sub-section (4) of Section 378 of the Code.

2. The applicant had filed complaint No. 144-1/2003, under Sections 494, 497 and 406, IPC in the Court of learned Sub-Divisional Judicial Magistrate, Chachyot at Gohar. The respondent was charged for commission of offences under Sections 494 and 406, IPC, but acquitted by the learned Sub-Divisional Judicial Magistrate

on 12-9-2007. In the application, it has been stated that certified copy of the judgement was applied on 1-11-2007, it was prepared on 15-11-2007 and as per certified copy of the judgement placed on record, it was delivered on 15-11-2007. It has been submitted that delay in filing the application seeking leave to file an appeal is neither intentional nor wilful.

3. The application has been opposed on the ground that under Sub-section (5) of Section 378 of the Code, maximum period within which leave to appeal can be filed in a complaint case when complainant is not a public servant is 60 days to be computed from the date of order. In the present case, admittedly the Judgement was announced on 12-9-2007 and application seeking leave to file an appeal against the judgement dated 12-9-2007 has been filed on 20 12-2007, i.e. mere than 60 days after the judgement dated 12-9-2007. It has been submitted that leave to file appeal application is time barred and delay cannot be condoned under Section 5 of the Limitation Act. The learned Counsel for the respondent has relied on *Kaushlya Rani v. Gopal Singh* : [1964]4SCR982 and has submitted that since leave to file appeal application has been filed more than sixty days from the date of Judgement, therefore, leave application is not maintainable and it cannot be entertained. The learned Counsel has submitted that it is admitted case that complainant in the present case was not a public servant.

4. Sub-sections (4) and (5) of Section 378 of the Code are reproduced as under:

(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 complainant 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.

5. In *Kaushalya Rani's* case (supra), the question before the Hon'ble Supreme Court was whether Section 5 of the Limitation Act, would apply to application for

special leave to appeal from an order of acquittal under Sub-section (3) of Section 417 of the Code. The Hon'ble Apex Court while dealing with the question, has held as follows: Hence, it may be said that there is no limitation prescribed by the Limitation Act for an appeal against an order of acquittal at the instance of a private prosecutor. Thus, there is a difference between the Limitation Act and the rule laid down in Section 417(4) of the Code in respect of limitation affecting such an application. Section 29(2) is supplemental in its character in so far as it provides for the application of Section 3 to such cases as would not come within its purview but for this provision. And for the purposes of determining any period of limitation pre-scribed by any special law, It has made the provisions of the Limitation Act, referred In Clause (a) of Sub-section (2) of Section 29 applicable to such cases to the extent to which they are not expressly excluded by such special or local law, and Clause (b) of that Sub-section expressly lays it down that the remaining provisions of the Limitation Act shall not apply to cases governed by any special or local law. In our opinion, therefore, the provisions of the Code supplemented by the provisions of Section 29(2) of the Limitation act, make it clear that Section 5 of the Limitation Act would not apply to an application for special leave to appeal under Section 417(3) of the Code.

6. The Sub-sections (3) and (4) of Section 417 of the Code, which were considered in Kaushalya Rani's case (supra), read as under:

(3) 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 complainant may present such an appeal to the High Court.

(4) No application under Sub-section (3) for the grant of special leave to appeal from the order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal.

7. The Sub-sections (4) and (5) of Section 378 of the Code are *pari materia* with Sub-sections (3) and (4) of Section 417 of the Code considered by the Hon'ble Supreme Court in Kaushalya Rani's case, except that in Sub-section (5) of Section 378 of the Code six months period is provided when the complainant is a public

servant, therefore, Kaushalya Rani's case (supra) is squarely applicable in the matter and application seeking leave to file appeal against the judgement dated 12-9-2007 filed in this Court on 20-12-2007 beyond the period of sixty days provided in Sub-section (5) of Section 378 of the Code is not maintainable. The period of limitation has been provided specifically in Sub-section (5) of Section 378 of the Code, therefore, this period cannot be enlarged by invoking inherent powers of this Court under Section 482 of the Code.

8. The result of the above discussion, application for condonation of delay in filing an application seeking leave to file an appeal against the judgement dated 12-9-2007 is not maintainable and is accordingly dismissed.

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