
(2016) 02 CAL CK 0008

In the Calcutta High Court

Case No : C.R.R. 307 of 2016 with C.R.A.N. 305 of 2016

Alka Sehgal & Ors.

APPELLANT

Vs

State of West Bengal and Anr.

RESPONDENT

Date of Decision : 11-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Limitation Act, 1963 — Section 5

Citation : (2016) 2 AICLR 40 : (2016) CriLJ 2030

Hon'ble Judges : Shib Sadhan Sadhu, J.

Bench : Single Bench

**Advocate : Sandipan Ganguly and Anusua Banik, Advocates, for the Appellant;
Anand Keshri, Advocate, Sreyasi Biswas, Advocate, for the Respondent**

Final Decision : Disposed off

Judgement

Shib Sadhan Sadhu, J. - By filing the instant revisional application, the petitioners seek to set aside/quash the impugned judgement and order dated 29th April, 2015 passed by the learned Additional District and Sessions Judge, Fast Track 2nd Court, Bichar Bhawan, Calcutta in Criminal Appeal No. 54 of 2014 dismissing the appeal ex parte for non-appearance of the appellants/petitioners on the date of final hearing. The petitioners have also filed an application under Section 5 of the Limitation Act praying for condonation of delay of 181 days in preferring this revisional application under Section 482 of the Code of Criminal Procedure.

2. Mr. Sandipan Ganguly, learned advocate appearing for the petitioners submits that the petitioners were absolutely dependent upon their learned conducting advocate in the matter of prosecuting the appeal before the appellate court, but, unfortunately, their learned advocate did not appear on the dates of hearing and as a result, the appeal was heard and decided ex parte. The petitioners were in complete dark and had no knowledge about such ex parte disposal of the appeal. Their learned advocate did not give any intimation to them. Consequently

warrants of arrest were issued against the petitioners after the lower court record was sent back. When the warrants of arrest issued on 31st December, 2015 were sought to be executed, then and then only the petitioners became aware of the entire state of affairs. Thereafter, they contacted with their learned advocate and have preferred this application under Section 482 of the Code of Criminal Procedure along with an application for condonation of delay being C.R.A.N. 305 of 2016.

3. Mr. Ganguly, learned advocate further submits that the petitioners, for whatever reasons might be, have been denied the right and/or opportunity of being heard in the appeal which they preferred against the judgement and order of conviction passed by the Trial Court against them. Therefore, if the delay is not condoned and they are not given opportunity to place their grievance before the appellate court, they will be seriously prejudiced and it will also cause miscarriage of justice. Therefore, according to him, the delay should be condoned and the petitioners should be allowed to place their say before the appellate court.

4. Ms. Sreyasi Biswas, learned advocate appearing for the opposite party no. 2/ K.M.C. opposes such submission made by Mr. Ganguly and contends that this Court while exercising revisional jurisdiction should not interfere with the impugned judgement and order which has been passed correctly after proper exercise of judicial discretion. She further contends that the plea taken by the petitioners is neither convincing nor acceptable. Since they were convicted after full trial and they preferred the appeal, it was their duty to be vigilant and they cannot be relieved of such onus by shifting blame upon their learned advocate. Therefore, according to her, the delay should not be condoned and the instant petition under Section 5 of the Limitation Act as well as the revisional application should be dismissed.

5. Mr. Anand Keshari, learned advocate appearing for the opposite party no. 1/ State does not raise any objection. On the contrary, he submits that the petitioners have sufficiently explained the delay in preferring these applications.

6. Having regard to the rival submission and contention advanced by the learned advocates, I would like to say that in exercising discretion under Section 5 of the Limitation Act, 1963, Court's approach should be pragmatic. I would like to mention further that the revisional power of the High Court is wide enough and must be exercised to further the ends of justice. In cases of serious miscarriage of justice, it possesses unfettered power to interfere.

7. The Hon''ble Supreme Court in the case of Abdul Ghafoor and Another v. State of Bihar reported in (2012) 1 C Cr.LR (SC) 57 was pleased to observe.

"5. The law of limitation is indeed an important law on the statute book. It is in furtherance of the sound public policy to put a quietus to disputes or grievances of which resolution and redressal are not sought within the prescribed time. The law of limitation is intended to allow things to finally settle down after a

reasonable time and not to let everyone live in a state of uncertainty. It does not permit any one to raise claims that are very old and stale and does not allow anyone to approach the higher tiers of the judicial system for correction of the lower Court's orders or for redressal of grievances at one's own sweet will. The law of limitation indeed must get due respect and observance by all Courts. We must, however, add that in cases of conviction and imposition of sentence of imprisonment, the Court must show far greater indulgence and flexibility in applying the law of limitation than in any other kind of case. A sentence of imprisonment relates to a person's right to personal liberty which is one of the most important rights available to an individual and, therefore, the Court should be very reluctant to shut out a consideration of the case on merits on grounds of limitation or any other similar technicality."

8. In the present case, the petitioners have been convicted and sentenced to suffer imprisonment. If the petitioners are shut up, they might lose their substantive right and personal liberty. On the contrary, no prejudice will be caused to the opposite parties if the delay is condoned and the matter is heard and decided on merit. Therefore, relying on the observation made by the Hon'ble Supreme Court in the case of Abdul Ghafoor v. State of Bihar (supra), I am inclined to allow the revisional application.

9. For the aforesaid reasons the delay is condoned and the application for condonation of delay being C.R.A.N. 305 of 2016 is allowed.

10. The impugned judgement and order dated 29th April, 2015 passed in Criminal Appeal No. 54 of 2014 is hereby set aside and consequently the criminal appeal be remanded. The learned Additional District and Sessions Judge, Fast Track 2nd Court, Bichar Bhawan, Calcutta is directed to hear the appeal afresh after noticing both the parties and to dispose of the same as expeditiously as possible, preferably within three months from the date of communication of this order.

11. In view of the facts and circumstances of the case, I am not inclined to pass any order as to costs.

12. The revisional application being C.R.R. 307 of 2016 is accordingly disposed of.

13. Urgent photostat certified copy of this judgement, if applied for, be given to the parties upon compliance of all formalities.