

(2017) 10 DEL CK 0142

In the Delhi High Court

Case No : Criminal Revision Petition No. 685 Of 2017, Criminal Miscellaneous Application No. 15058 Of 2017

Deepak Bajpai

APPELLANT

Vs

State (Govt. Of Nct Of Delhi)

RESPONDENT

Date of Decision : 27-10-2017

Acts Referred:

Limitation Act, 1963 — Section 5

Code Of Criminal Procedure, 1973 — Section 200, 202, 251, 317, 397, 401, 482

Indian Penal Code, 1860 — Section 34, 35, 499, 500, 501, 502

Citation : (2017) 10 DEL CK 0142

Hon'ble Judges : I.S. Mehta, J

Bench : Single Bench

Advocate : Prashant Mehdiratta, Harshwardan, Mohd. Irsad, Aanchal, Richa Kapoor, Sidharth Luthra, Manik Dogra, Anupam Prasad, Manoj Taneja

Judgement

I.S. Mehta, J

1. Instant application, i.e. CRL.M.A. 15058/2017, under Section 482 Cr.P.C. read with Section 5 of the Limitation Act for condonation of delay of 458 days in filing the present revision petition has been filed by the petitioner-Deepak Bajpai.

2. Brief facts as stated are that the respondent No.2/complainant, i.e. Arun Jaitley, had filed a complaint under Section 200 Cr.P.C. against the accused persons, i.e. Arvind Kejriwal, Ashutosh, Sanjay Singh, Kumar Vishwas, Raghav Chadha and Deepak Bajpai (petitioner herein), alleging therein that the said persons had committed offences under Sections 499/500/501/502 IPC read with Sections 34/35 IPC.

3. Thereafter, the learned Chief Metropolitan Magistrate after closing the pre-summoning evidence and hearing the submissions of the learned counsels for the parties vide order dated 09.03.2016 summoned all the accused persons (including the present petitioner) for the offence under Section 500 IPC read with Section 34 IPC.

4. Subsequently, on 24.10.2016 the said accused persons (including the petitioner) moved joint application seeking permission to address arguments at the stage of framing of notice under Section 251 Cr.P.C.

5. Vide order dated 30.01.2017 the learned Chief Metropolitan Magistrate dismissed the aforesaid application filed by the accused persons with the view that the application is bereft of any merit, mala fide and filed solely with a view to stall the trial.

6. Consequently, vide order dated 25.03.2017 the learned Chief Metropolitan Magistrate framed notice under Section 251 Cr.P.C. against all the accused persons (including the petitioner) for the offence under Sections 500/34 IPC.

7. Aggrieved by the aforesaid orders dated 24.10.2016, 30.01.2017 and 25.03.2017 passed by the learned Chief Metropolitan Magistrate, Patiala House Courts, New Delhi in C.C. No. 210/01/15 the petitioner has preferred the present revision petition along with instant application for condonation of delay of 458 days in filing the present revision petition.

8. By this order I shall dispose of the application for condonation of delay of 458 days filed on behalf of the petitioner.

9. The learned counsel for the petitioner has submitted that refusal to condone the delay will result in throwing out a meritorious case in the threshold. The orders which have been challenged are patently void and illegal and the delay should be condoned so that substantial justice can be done and the meritorious matter is not thrown out on technical grounds. He has further submitted that pure question of law are involved in this matter and substantial justice deserves that the petitioner be heard despite there being a delay of 458 days.

The learned counsel for the petitioner has further submitted that the petitioner has an excellent arguable case on merits.

10. He has further submitted that the delay has not occasioned deliberately. He has further submitted that the petitioner being a public figure was involved in different duties of elections and the cause of delay has been mentioned in rejoinder. He has further submitted that the delay has not occasioned due to culpable negligence. He has further submitted that the expression sufficient cause employed by the legislature is adequately elastic so that the Courts can apply the law in a meaningful manner to sub-serve the ends of justice.

11. In support of his arguments, learned counsel for the petitioner has relied upon following judgments:-

i. Collector, Land Acquisition Anantnag and Anr. vs. Mst. Katiji and Ors; (1987) 2 SCC 107.

ii. Municipal Corporation of Delhi vs. Girdharilal Sapuru and Ors; (1981) 2 SCC 758.

iii. Union of India vs. Giani; (2011) 11 SCC 480.

12. The learned counsel on behalf of the petitioner while arguing the condonation application under Section 482 Cr.P.C read with Section 5 of the Limitation Act has submitted that the application moved on behalf of the present petitioner is a bona fide application which is supported with affidavit of the petitioner-Deepak Bajpai and he has filed rejoinder to the application too that too is supported with an affidavit. He has further submitted that irrespective of his oral argument he has already filed a note on the aspect of the condonation of delay and relied on the judgments of the Hon'ble Supreme Court in Collector, Land Acquisition Anantnag (supra).

13. The learned counsel on behalf of the petitioner has further submitted that the guidelines are laid down in the Apex Court judgment Collector, Land Acquisition Anantnag (supra). It is submitted that para 4 of the aforesaid judgment talks about the substantial justice which in the present case means non following of Section 202 Cr.P.C., i.e. postponement of issue of process. The said postponement of the process under Section 202 Cr.P.C. is duly interpreted by the Apex Court in Abhijit Pawar v. Hemant Madhukar Nimbalkar And Another; (2017) 3 SCC 528. The aforesaid judgment clearly establishes that provision of Section 202 Cr.P.C. clause 1 is mandatory.

14. The learned counsel on behalf of the petitioner has submitted that insertion of Section 202 Cr.P.C. was required to avoid the difficulties of the accused persons who are residing outside the jurisdiction of the Trial Court. In the present summoning order the petitioner is residing at Kanpur has not been discussed. Therefore, Section 202 Cr.P.C. qua against the petitioner is violated. In view of the Apex Court judgment the summoning order is bad in law and is liable to be set aside.

15. The learned counsel on behalf of the petitioner has submitted that the summoning order wrongly interpreted Section 202 Cr.P.C. qua accused No.2 & 4 only. The petitioner is accused No.6. His aspect regarding Section 202 Cr.P.C. is not considered. Subsequently, while framing of notice, the petitioner had right to be heard, however, the trial court has not given him permission to argue while framing of notice under Section 251 Cr.P.C. The petitioner on the first date after the summoning order, the petitioner did appear in the trial court, and subsequently notice was issued through counsel under Section 251 Cr.P.C. The petitioner was required to be heard.

16. It is further submitted that the impugned order dated 30.01.2017 and the order dated 25.03.2017 whereby notice has been framed upon the petitioner is patently perverse for non-compliance with the judgments of Hon'ble Supreme Court in Bhushan Kumar And Another vs. State (NCT of Delhi) And Another; (2012) 5 SCC 424, Krishna Kumar Variar vs. Share Shoppe; (2010) 12 SCC 485 and of this Court in S.K. Bhalla vs. State & Ors; 2011 SCC Online Del 2254 and Urrshila Kerkar vs. Make My Trip (India) Private Ltd.; 2013 SCC Online Del 4563.

17. Since the petitioner was not given opportunity of being heard in person, therefore, the impugned order is bad in law.

The reaching of the correct conclusion on law is mislead at the Trial Court while following a consent order dated 17.11.2016 in CrI. Appeal No.1101/2016 which was not applicable in the present petition as it was not a judgment on merit and was a consent order in which the petitioner was not a party.

18. The present petitioner has filed the present revision petition challenging three orders:-

i. Order on summoning dated 09.03.2016.

ii. Dismissing the application under Section 251 Cr.P.C. dated 30.01.2017.

iii. Framing of notice dated 25.03.2017.

19. The learned counsel has further submitted that if the aforesaid application for condonation of delay is rejected, then, the petitioner's right to hear on three accounts will be affected and this is where the judgment Abhijit Pawar (supra) indicates. He has further relied upon judgment of the Apex Court in Bhushan Kumar (supra).

20. The learned counsel for the petitioner while emphasising the argument on framing of notice has submitted that while putting acquisition/framing notice to the accused, the personal appearance of petitioner is sine qua non to physically present to make communication of his acceptance or denial of the allegation and without the presence of the acceptance or denial communication the very purpose of the fair trial shall be taken away.

21. The learned counsel on behalf of the petitioner has further submitted that Section 251 Cr.P.C. is mandatory and the accused has to be heard at the stage of Section 251 Cr.P.C. and Adalat Prasad vs. Rooplal Jindal And Others; (2004) 7 SCC 338 judgment will not come in its way. In two different cases the Apex Court in O.P. Kathpalia vs. Lakhmir Singh (Dead) and Ors; (1984) 4 SCC 66 and State of Karnataka vs. Y. Moideen Kunhi and Ors; (2009) 13 SCC 192 has condoned delay of 5 years and 6,500 days respectively.

22. It is further submitted that para 24 & 25 of the summoning order are patently illegal and the notice under Section 251 Cr.P.C. was signed by the lawyer of the petitioner under protest on 25.03.2017.

23. On the contrary the learned senior counsel for the respondent No.2 has submitted that the whole case hinges around whether the instant application is to be allowed on the basis of merit in the plea under section 202 Cr.P.C. The petitioner is Accused No.6 and the inquiry under Section 202 Cr.P.C has already been carried out and the order specifically states by the learned Metropolitan Magistrate that there is no need to carry further inquiry under Section 202 Cr.P.C and the learned CMM, Patiala House, New Delhi was satisfied that looking into the evidence no further inquiry is required and the evidence already recorded

shall suffice for the purpose of Section 202 Cr.P.C against which the petitioner has preferred the present petition. While invoking revisional jurisdiction under Sections 397/401 Cr.P.C there is a delay of 458 days for which no sufficient cause is shown. On the contrary, a false explanation regarding obtaining of certified copies in June, 2017 is made whereas complete set of documents was supplied as reflected in Trial Court orders in April/May, 2016 itself.

24. The accused was served on the given address at Delhi and he appeared pursuant to the service on 7th April, 2016. The petitioner i.e. accused Deepak Bajpai is shown to be residing at East Patel Nagar, Delhi and summons issued by the Court were served to him on that very address and therefore the compliance of Section 202 Cr.P.C is not required so far as the petitioner Deepak Bajpai is concerned.

25. The learned senior counsel for the respondent No.2 has relied on the following judgments:-

- i. Abhijit Pawar v. Hemant Madhukar Nimbalkar And Another; (2017) 3 SCC 528.
- ii. Vijay Dhanuka And Others vs. Najima Mamtaj And Others; (2014) 14 SCC 638.
- iii. Collector, Land Acquisition Anantnag and Anr. vs. Mst. Katiji and Ors; (1987) 2 SCC 107.
- iv. Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai; (2012) 5 SCC 157.

26. The learned senior counsel for the respondent No.2 while replying the arguments of learned counsel for the petitioner has submitted that firstly, the application for condonation of delay does not comply with the proposition of law under Section 5 Limitation Act; that each days delay must be explained. Reliance is placed on Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai; (2012) 5 SCC 157 and Postmaster General and Others vs. Living Media India Limited and Another; 2012 3 SCC 563. Secondly, the application for condonation of delay is false to the knowledge of the petitioner since his claim is of obtaining certified copies in June, 2017 whereas the copies filed with the petition indicate that certified copies were available on 24.04.2017. The petitioner's conduct is further demonstrated by the application for condonation of delay being Crl.M.A. No.15056 which seeks exemption from certified copies thus rendering the ground for condonation of delay as falsified and is liable for forgery.

27. The decision in Mosamad Katijis (supra) case relied upon by the petitioner was considered by the Supreme Court in 2012 decision Maniben Devraj Shah (supra) cited above and after considering it, the Court in para 29 recorded that "giving holes in the story concocted" and delay in applying for certified copies was wrongly made a ground to condone delay by the Court. Similarly, in Postmaster General (supra), the Court holding absence of proper explanation was not a reason sufficient to condone the delay. Thirdly, the petitioner was summoned at the given address in Delhi and summons were received at the

given address in Delhi on 20.03.2016.

28. The learned senior counsel for respondent No.2 has further submitted that the challenge to the summoning order is premised on Section 202 Cr.P.C which mandates an inquiry if the accused is outside jurisdiction. Such an inquiry is not relatable to the address of the accused but to his role and in the present case such an inquiry has been conducted by examining witnesses other than the complainant as also the witness from DDCA Shri Ravindra Manchanda as a CW-4 as well. The learned Metropolitan Magistrate found the pre summoning evidence recorded till that date to comply with the mandate of 202 Cr.P.C. at para 22 of order dated 09.03.2016 and relied on *Abhishek Agrawalla vs. Boortmalt NV & Anr*; 2011 SCC Online Del 797. The case *Abhijit Pawar relies on Vijay Dhanuka and Others vs. Najima Mamtaj and Others*; (2014) 14 SCC 638 where the court in para 15 recorded that examination of complainant was adequate and dismissed the challenge of the accused.

29. As regard to Section 251 Cr.P.C. is concerned the learned Magistrate had considered the law in three judges bench in *Adalat Prasad (supra)* which was followed in *Subramaniam Sethuraman vs. State of Maharashtra and Another*; 2004 13 SCC 324 which lay down that provision under Section 251 Cr.P.C. that there is no basis to hear the accused.

30. The learned senior counsel has further submitted that firstly, in summons case under Section 251 Cr.P.C. there is no concept of hearing of the accused at the stage of framing or notice or before that. Secondly, being a summons case the accused can appear/or be represented through counsel even under Section 251 Cr.P.C as held in *Bhaskar Industries Ltd. vs. Bhiwani Denium & Apparels Ltd. and Others*; (2001) 7 SCC 401 and followed in *Kajal Sengupta vs. Ahlcon Ready Mix Concrete, Division of Ahluwalia Contract (India) Limited*; 2012 (189) DLT 518.

31. The learned senior counsel has further submitted that so far the protest part is concerned as advance by the learned counsel for the petitioner, the said plea/ground is not taken in the petition.

32. In rebuttal, the learned counsel for the petitioner has submitted that the allegation that the petitioner was served in Delhi is patently illegal and against the facts. The respondent No.2 had not given the address of the petitioner in his complaint. The proof of resident is on page 104 to page 109 of the paper book as the documents to state that the petitioner is a permanent resident of Kanpur. The very fact that he was the member of the political party, the summon was sent to the office of the political party. Some official of the political party received the notice would not amount the notice to be served. The factum of the petitioner being summoned is being reported in all the newspaper and social media. Having come to know through the media (print/electronic) the petitioner appeared before the Trial Court. Mere appearance of the petitioner before the Trial Court would not take away the compliance of Section 202 Cr.P.C. The mandate of Section 202 Cr.P.C. had to be carried out before passing the summoning order.

Mere services of summons to the party office would not cause the legality on non compliance of Section 202 Cr.P.C.

33. The learned counsel for the petitioner relied upon the judgment in case Collector, Land Acquisition Anantnag and Anr vs. Mst. Katiji and Ors; (1987) 2 SCC 107. It is further submitted that the learned Senior counsel for the respondent No. 2 has infact wrongly stated that the Katiji (supra) is re-considered by Postmaster General and Others vs. Living Media India Limited and Another; (2012) 3 SCC 563. The proposition being sought to be raised by the learned counsel for the respondent No. 2 that Katiji (supra) is not a good law is wrong statement to make, Katiji (supra) till now is good in law.

34. The whole case hinges around whether the application for condonation of delay under Section 482 read with Section 5 of the Limitation Act, filed by the present petitioner is bona fide in context of the facts and the circumstances of the present petition?

The answer is NO.

35. Basically, in the instant petition the petitioner has challenged the three following orders:-

I. Summoning order dated 09.03.2016.

II. Dismissal of the application at the stage of framing of notice under Section 251 Cr.P.C. vide order dated 30.01.2017.

III. Framing of notice vide order dated 25.03.2017.

36. The petitioner was summoned under Sections 500/34 IPC vide order dated 09.03.2016 after adducing five respondent/complainant witnesses.

The title of the complaint case No. 210/01 and the relevant part of the summoning order dated 09.03.2016 are reproduced as under:-

"IN THE COURT OF LD. CHIEF METROPOLITAN MAGISTARTE, PATIALA HOUSE COURTS, NEW DELHI

Complaint Case No.----- of 2015

In the matter of:-

Mr. Arun Jaitley

2, Keishna Menon Marg,

New Delhi

..... Complainant

Versus

1. Mr. Arvind Kejriwal,

Bungalow No.6, Flag Staff Road,

Civil Lines, Delhi-110054 ...Respondent/Accused No.1

2. Mr. Ashutosh 83B, Block B,

Express View Apartments,

Sector 105, Noida-201305 ...Respondent/Accused No.2

3. Mr. Sanjay Singh

C/o 28/B, Bodhraj Kohli Marg, East Patel Nagar,

New Delhi-110008...Respondent/Accused No.3

4. Mr. Kumar Vishwas 3/1084, Vasundhara,

Ghaziabad-201012 ...Respondent/Accused No.4

5. Mr. Raghav Chadha 472, Double Storey, UGF New Rajinder Nagar,

New Delhi-110060 ...Respondent/Accused No.5

6. Mr. Deepak Bajpai

C/o 28/B, Bodhraj ohli Marg, East Patel Nagar,

New Delhi-110008 ...Respondent/Accused No.6"

xxx xxx xxx xxx

Oder dated 09.03.2016

"27. Considering the aforesaid facts and circumstances, taking a prima facie view, in my opinion there are sufficient grounds to summon accused persons namely Arvind Kejriwal (A-1), Ashutosh (A-2), Sanjay Singh (A-3), Kumar Vishwas (A-4), Raghav Chadha (A-5), Deepak Bajpai (A-6) for the offence u/s 500 IPC r/w Sec. 34 IPC."

37. As per the title of the complaint case the address of the petitioner is - Deepak Bajpai, C/o 28/B, Bodhraj Kohli Marg, East Patel Nagar, New Delhi-110008.

38. The petitioner on the basis of the said summoning order dated 09.03.2016 did appear in person before the Court below on 07.04.2016 along with his counsel. Once the petitioner made himself available for trial and was represented by his counsel Ashutosh Sitaraman the procedure/condition of the fair trial is completed on that account. There is no iota of existence of unfairness coming on the record or pleaded by the petitioner, what was to be investigated by the learned Chief Metropolitan Magistrate which non-compliance affects its right or prohibits for passing the summoning order on merit.

Therefore, the plea of the petitioner leads nowhere in its substance.

39. So far the dismissal of the application at the stage of framing of notice under

Section 251 Cr.P.C. vide order dated 30.01.2017 as well as framing of notice under section 251 Cr.P.C. vide order dated 25.03.2017 are concerned the petitioner was represented through his counsel Ashutosh Sitaraman, and the petitioner he himself succeeded in taking exemption of his personal appearance through the said counsel. Once the petitioner's exemption application through counsel was allowed he cannot take a breath subsequently by taking a U-turn by saying that the Court below proceeded unfairly qua against him in absence of any substantial right being violated.

40. The notice dated 25.03.2017 was framed under Section 251 Cr.P.C. for the offence punishable under Sections 500/34 IPC which is a summons triable case. The notice is to be framed on the basis of the evidence available on the record.

41. Once the learned Magistrate is satisfied that there exist sufficient evidence to frame notice under Section 251 Cr.P.C. the learned Magistrate can proceed with the matter in accordance with the law. For the sake of presumption even if the petitioner was present on the said date his counsel would have taken the same plea which is available to the petitioner as per law. Here, it is not the plea of the present petitioner that he pleaded guilty on the said date and the Court below was right in framing of notice under section 251 Cr.P.C. in absence of the petitioner represented through counsel. Therefore, this Court is of the view that no prejudice has been caused to the petitioner. Reliance is placed on the judgement of the Apex Court in case Bhaskar Industries Ltd. vs. Bhiwani Denium & Apparels Ltd. and Others; (2001) 7 SCC 401 which is reproduced as under:-

"17. Thus, in appropriate cases the magistrate can allow an accused to make even the first appearance through a counsel. The magistrate is empowered to record the plea of the accused even when his counsel makes such plea on behalf of the accused in a case where the personal appearance of the accused is dispensed with. Section 317 of the Code has to be viewed in the above perspective as it empowers the court to dispense with the personal attendance of the accused (provided he is represented by a counsel in that case) even for proceeding with the further steps in the case. However, one precaution which the court should take in such a situation is that the said benefit need be granted only to an accused who gives an undertaking to the satisfaction of the court that he would not dispute his identity as the particular accused in the case, and that a counsel on his behalf would be present in court and that he has no objection in taking evidence in his absence. This precaution is necessary for the further progress of the proceedings including examination of the witnesses."

42. Admittedly, the petitioner was aware of the fact that the proceeding qua against him was pending trial and he was represented by his counsel.

43. The petitioner did not challenge the said summoning order dated 09.03.2016 prior to the passing of the second subsequent order dated 30.01.2017. The petitioner also did not challenge the said order dated 30.01.2017 independently prior to framing of notice vide order dated 25.03.2017.

44. The petitioner is presently challenging the aforesaid three orders, i.e. 09.03.2016, 30.01.2017 and 25.03.2017, just to avail a fresh process under the garb of present application under Section 5 of the Limitation Act, which factually is misuse of process of law. Such misuse of process of law cannot be termed bona fide in absence lack of justifiable and bona fide explanation since 09.03.2016 onwards till the filing of the present petition. The certified copies were received by the petitioner on 24.04.2017 but it does not indicate when the same were applied but the petitioner in the application for condonation of delay claims that the certified copies were received in the month of June 2017 without any justifiable and bona fide explanation. Therefore, the petitioner had to explain the delay on each and every account to which the petitioner failed to make out bona fide on his part on the aforesaid reasons. The judgments relied by the learned counsel for the petitioner loses its significance.

45. The present application under Section 482 Cr.P.C. read with Section 5 of the Limitation Act for condonation of delay of 458 days lacks justifiable and bona fide grounds for condonation of delay. Therefore, the same is dismissed. Consequently, the present petition, i.e. CrI. Rev. P. 685/2017, too is dismissed.

46. Copy of this order be sent to the concerned Court.

47. No order as to costs.