
(1997) 05 P&H CK 0149

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 215 of 1997 (O&M)

Devi Sahai

APPELLANT

Vs

Mahabir Prashad .

RESPONDENT

Date of Decision : 13-05-1997

Acts Referred:

Citation : (1997) 4 RCR(Criminal) 651

Hon'ble Judges : V.S.Aggarwal, J

Advocate : Baldev Singh, Kapil Aggarwal, K.K. Aggarwal, M.L. Saini, Advocates for appearing Parties

Judgement

V.S. Aggarwal, J. (Oral)

1. Mahabir Prasad respondent had filed a criminal complaint against the petitioners. It was alleged that he is the owner of property bearing No. MEP 1980, 1981, 1978 and 1979 situated at Narnaul. He had purchased it vide two registered sale deeds dated 28.9.1976 and that he alongwith his wife Smt. Bimla are residing therein. Respondent further alleged that there was some dispute between him and the petitioners. Regarding it a compromise was effected. On 9.10.1994 at about 10.00 A.M. the respondent and his sons Niraj Kumar and Sanjiv Kumar were taken to police station Sadar, Narnaul. They were made to sit there. In their absence the petitioner with help of the police, demolished the southern wall of his house as well as the tin shed constructed by him. 12 tin sheets, 3 bamboos and 7 ballies besides the electric meter of the respondent were taken by the petitioners. They dismantled the electric fitting of the house. It is also the case of the respondent that he and the aforesaid two sons were made to sit in the police station for 26 hours illegally and thereafter they were released from custody. They were told that sons of Harparshad had taken possession of the properties. If they took any action, they would be kept in custody throughout the life.

2. The learned trial court recorded the preliminary evidence. After considering the same, the trial court held that no prima facie case was drawn. The complaint

was dismissed. Aggrieved by the same a revision petition was filed in the Court of Sessions. On 4.7.1996 the learned Additional Sessions Judge, Narnaul set aside the order of the trial court and held that from the preliminary evidence produced, prima facie case with respect to offences punishable under Sections 148/452/427/149 and 380/149 IPC was made out. The respondent was directed to appear before the trial court on 11.7.1996. It is a common case that the learned Additional Sessions Judge had allowed the revision petition without issuing notice to the petitioners.

3. Aggrieved by the same, the present revision petition has been filed challenging the order passed by the learned Additional Sessions Judge.

4. The said petition has been accompanied by an application filed by the petitioner under Section 5 of the Limitation Act seeking condonation of delay. The petitioners contended that the learned Additional Sessions Judge allowed the revision petition on 4.7.1996. They were under a bona fide belief that period of 90 days would start from the date on which summons would be issued by the Chief Judicial Magistrate, Narnaul. Summons were issued on 25.12.1996 for 12.2.1997. The petitioners calculated the period of limitation from 7.2.1997. By this mistake delay of 111 days occurred. It was prayed that the same may be condoned.

5. The application has been contested. It has been alleged that there are no sufficient ground for condonation of delay. Respondent's case is that on 16.7.1996 the notices were issued to the petitioners for 4.11.1996. Raj Kumar, Som Dutt and Ashok Kumar were dully served on 25.10.1996. Devi Sahai was served on 31.10.1996. It was asserted that most of the petitioners have already been served and plea now being offered is an afterthought.

6. As already pointed out above the sole ground taken for condonation of delay is that the petitioners are under the impression that they would get 90 days period after they are served i.e. when notice is received from the Chief Judicial Magistrate. They were served for 12.2.1997 and they calculated the period of limitation from that date.

7. Sufficient ground has to be shown before delay in filing of the revision petition can be condoned. It would not be possible to define sufficient ground. Each case has to be decided on its own facts and circumstances. Normally sufficient ground would be one which is a fact which was beyond the control of the petitioners who seek condonation of delay. But if a party or a person claims condonation of delay on facts which are not only incorrect but patently unbelievable, it will not amount to sufficient ground for condonation of delay.

8. The petitioners contend that they were only served when notices were issued for 12.2.1997. The respondent has placed on the record the copies of the summons issued and the report of service so as to establish that some of the petitioners had been served in October, 1996. This is established in the case of Devi Sahai, Son Dutt, Raj Kumar and Ashok Kumar petitioners. In other words,

their contention that they were served for 7.2.1997 is incorrect. In fact they were served in October, 1996. The plea floated is incorrect and, therefore, necessarily there is no sufficient ground for condonation of delay.

9. There is another way of looking at the matter. The certified copy was applied on 13.7.1996 of the order passed by the learned Additional Sessions Judge. It was supplied on 20.7.1996. Petitioners thus were aware about the passing of the impugned order by the learned Additional Sessions Judge. They waited and did not file the revision petition in time. They cannot now be heard to state that they were under a bona fide impression that period of limitation would only commence after they are served. Formally the notice was issued by the Chief Judicial Magistrate. This is indeed not correct because as mentioned above, they even applied for the certified copy in July, 1996 itself.

In the absence of there being any sufficient cause for condonation of delay, it becomes unnecessary to consider the merits pertaining to the order of the learned Additional Sessions Judge.

For these reasons, the revision petition fails and dismissed.