
(2018) 03 PAT CK 0053

In the Patna High Court

Case No : Criminal Appeal (SJ) No.64 of 2018

Dinesh Tuddu, S/o Kusum Lal Tuddu

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 12-03-2018

Acts Referred:

Limitation Act, 1963 , — Section 5

Citation : (2018) 3 PLJR 466

Hon'ble Judges : ADITYA KUMAR TRIVEDI

Bench : Single Bench

Advocate : Pramod Kumar Singh; Sujit Kumar Singh

Final Decision : Allowed

Judgement

1.Heard, learned counsel for the appellant as well as learned Additional Public Prosecutor over I.A. No.30 of 2018 relating to condonation of delay in filing the appeal.

2.This appeal has been filed against the judgment of conviction dated 28.09.2016 and order of sentence dated 29.09.2016 passed in Sessions Trial

No.93 of 2016/ 199 of 2007(S) by the Sessions Judge, Madhepura, convicting the appellant along with others under different heads and for that, other

convicts have preferred Cr. Appeal (S.J.) No.361 of 2016, Cr. Appeal (S.J.) No.990 of 2016, which are pending since before.

3.As per Schedule-Part-VI, Rule-115(b) of the Limitation Act, the appeal before the High Court against the judgment of conviction and sentence is to

be preferred within 60 days from the date of sentence in counting the period of limitation. The time consumed in getting the copy of the judgment

impugned is to be excluded. Appeal has been filed on 02.01.2018 that means to say, approximately after one year, four months and four days. To

condone the same, I.A.No.30 of 2018 has been filed.

4. Gone through the averments made thereunder, it is evident that appellant has pleaded that he happens to be illiterate, farm labourer having no

knowledge of law as well as its repercussion, suffering from financial crisis and further, took step for getting the certified copy of the judgment on

16.09.2017, on which date, he came to know that L.C. Record has already been transmitted to the High Court relating to other appeals and in the

aforesaid background, it has been disclosed that there happens to be no willful negligence at his part, whereupon delay is fit to be condoned.

5. In order to justify such submission, learned counsel for the appellant has relied upon Abdul Ghafoor and another vs. State of Bihar reported in 2011

(4) P.L.J.R. 214 (S.C.), wherein the delay of 15 months in filing Cr. Revision against the dismissal of appeal was rejected by the High Court,

discussing the basic principle of Limitation Act and further, ambit and scope of Section 5, under Para-5 of the aforesaid judgment, the Hon'ble

Apex Court opined that the delay ought to have been condoned.

6. Prescribing limitation for seeking relief is a phenomenon by which, irrespective of right on efflux of time, the said right is found non-executable.

However, in certain circumstances if sufficient cause is shown, the same is to be condoned, which happens to be the crux of Section 5 of the

Limitation Act. Moreover, it has been settled at rest that the expression 'sufficient cause' is to receive liberal construction so as to advance

substantial justice where there is no negligence, in action or want of bonafide is imputable to the appellant, the delay is to be condoned. The discretion

is to be exercised like any other judicial discretion with vigilance and circumspection. The discretion is not to be exercised in any arbitrary, vague,

fanciful manner. The true test is to see whether the applicant has acted with due diligence.

7. Because of the fact that in haphazard manner, the prayer for condonation of delay in terms of Section 5 of the Limitation Act are being filed without

substantiating the plea of bonafide, has been taken into consideration in depth in Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar

Academy and others reported in (2013) 12 SCC 649, wherein it has been held:-

'21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1.(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2.(ii) The terms "½sufficient cause½" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3.(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4.(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5.(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6.(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7.(vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8.(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9.(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10.(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11.(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12.(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13.(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

22.1.(a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the

courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2.(b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3.(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving

consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4.(d) The increasing tendency to perceive delay as a non - serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant

manner requires to be curbed, of course, within legal parameters.½

8.Ignorance of law is no excuse, this happens to be time tested principle. Had there been eagerness at the end of the appellant to challenge the

judgment impugned, there was no necessity for having financial assistance as he was well within his competence to prefer Jail Appeal and the same

happens to be entertainable, maintainable in the eye of law.

9.Apart from this, whatever been incorporated in the I.A. Petition, are not sound ground even in terms of Abdul Ghafoor (Supra) Case. However,

considering the fact that other convicts have already preferred appeals, which are pending before the High Court, on account thereof, it looks prudent

to condone the delay. Accordingly, delay is condoned. Consequent thereupon, I.A. No.30 of 2018 is allowed.