

(2017) 03 MP CK 0117
In the Madhya Pradesh High Court
Case No : 440 of 2012

Gaurav Agarwal

APPELLANT

Vs

State of MP and another

RESPONDENT

Date of Decision : 20-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Essential Commodities Act, 1955](#), [Section 3](#)
[Section 7](#) - Powers

Citation : (2017) 03 MP CK 0117

Hon'ble Judges : G.S. Ahluwalia

Bench : Single Bench

Advocate : Vivek Khedkar, Prashant Sharma

Judgement

1. This application under Section 482 of Cr.P.C. has been filed challenging the legality and correctness of order dated 22-9-2011 passed by Xth A.S.J., Gwalior in M.Cr.C. No.3/2011 by which the Criminal Revision filed by the applicant against the order dated 8-7-2008 passed by C.J.M., Gwalior in Case No.4871 of 2007 was dismissed. By the impugned order dated 22-9-2011, the application filed by the applicant under Section 5 of Indian Limitation Act was rejected and consequently, the Criminal Revision was also dismissed as barred by time.

2. The necessary facts for the disposal of the present application in short is that the applicant had filed a complaint under Section 629-A of Companies Act, for punishing the respondents under Section 217(5) and 628 of Companies Act as well as under Section 626 of Companies Act due to non- compliance of provisions of Section 217 and 628 of the Companies Act.

3. The Chief Judicial Magistrate by order dated 8-7-2008 held that the offence committed by the respondents is not a continuous offence and as the complaint was not filed within a period of limitation, therefore, dismissed the complaint on the ground of delay.

4. Being aggrieved by the order of the C.J.M., Gwalior, the applicant filed a criminal revision along with an application for condonation of delay. It was pleaded in the application for condonation of delay that the Asstt. Solicitor General who was representing the applicant before the Court of C.J.M., Gwalior did not inform the applicant about the passing of an adverse order against the applicant. However, the applicant came to know about the order of the C.J.M. on 19-4-2010 when an information was given to R.O.C. by the Soyabeen Process Association of India. After receiving the information, the R.O.C. wrote a letter to the Asstt. Solicitor General to take necessary steps in the matter. After seeking opinion from the A.S.G., an application for grant of certified copy was filed on 14-5-2010 and the same was supplied on 28-5-2010. Thereafter, the revision was filed on 12-7-2010.

5. It is submitted by the Counsel for the applicant that after the certified copy of the order is received, then the proposal was sent for filing revision and after following the procedural formalities, the revision was filed on 12-7-2010. However, he fairly conceded that in the application for condonation of delay, nothing has been mentioned about the steps taken by the applicant for filing the criminal revision. However, it is submitted by the Counsel for the applicant that as the applicant is the Central Government machinery and various formalities are required to be completed before filing the revision, therefore, it cannot be said that the applicant was negligent in filing the revision after getting information with regard to the passing of the adverse order by the Court of C.J.M., Gwalior.

6. The Counsel for the respondent vehemently submitted that the applicant had not made out a sufficient ground for condonation of delay in filing the criminal revision. Delay of each and every day is required to be explained, however, the application is completely silent about the steps taken by the applicant after obtaining the certified copy of the order of the C.J.M., Gwalior.

7. Heard the learned Counsel for the parties.

8. From the perusal of the application for condonation of delay, it is clear that it is not happily worded. However, as the applicant is the agency of the Central Govt. and several formalities are required to be completed before filing of the revision, therefore, this Court is of the considered opinion that after getting the information with regard to the dismissal of the complaint by the C.J.M., Gwalior, there does not appear to be any lethargy on the part of the applicant in filing the revision. It is the case of the applicant that it was not informed by the Asstt. Solicitor General about the adverse order passed by the C.J.M., Gwalior and for the first time, on 19-4-2010, the applicant came to know about the order passed by the C.J.M., Gwalior. Thereafter, opinion was sought from the then Asstt. Solicitor General and after obtaining the certified copy the revision was filed. Although it has not been mentioned in the application for condonation of delay that when the file was sent to the sanctioning authority for grant of sanction to file revision, however, it is a matter of common knowledge that a revision cannot be filed without obtaining permission from the competent authority.

9. It is also a well established principle of law that for the mistake committed by the Counsel, the party must not suffer. In the present case, it is the specific case of the applicant that the Asstt. Solicitor General did not inform the applicant with regard to the adverse order passed by the C.J.M., Gwalior.

10. It is well established principle of law that "Sufficient Cause" is a cause for which the applicant cannot be blamed. "Sufficient cause" means that the party should not have acted in a negligent manner. Where the matter was being looked after by the Asstt. Solicitor General, then it was expected that he would timely inform the applicant about the adverse order passed by the C.J.M., Gwalior. However, it is the specific case of the applicant that it was not informed by the A.S.G. about the passing of the adverse order. The mistake of not contacting the A.S.G. regularly cannot be said to be a mere device to cover an ulterior motive. It was expected from the applicant that it should have been more vigilant, but at the same time, it cannot be lost sight of the fact that when a Govt. agency is a party to the litigation, then it has to act through OIC. If any negligence is shown by the OIC, then the department or Govt. agency should not be made liable for the same unless and until, it comes on record that even after getting the information about the adverse order, no steps were taken.

11. Accordingly, this Court is of the considered opinion, that by adopting a liberal view in the matter, the delay in filing the criminal revision should have been condoned.

12. Accordingly the order dated 22.9.2011 passed by the Revisional Court is hereby set aside. The application filed by the application for condonation of delay in filing the criminal revision is hereby allowed subject to payment of cost of Rs. 1000/-. The case is remanded back to the Revisional Court for its decision on merits.

13. The application filed by the applicant under Section 482 of Cr.P.C. is hereby allowed.