

(1986) 02 KAR CK 0028

In the Karnataka High Court

Case No : Criminal Revision Petition No. 561 of 1983

Ladder Siddabasappa

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 06-02-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 473
Mysore Cotton Control Act, 1964 — Section 12, 3 (1) (b) (ii)

Citation : (1986) ILR (Kar) 1216

Hon'ble Judges : R.G. Desai, J

Bench : Single Bench

Advocate : S.S. Patil, for S. Vijayshankar, for the Appellant; S.S. Koti, High Court Govt. Pleader, for the Respondent

Judgement

1. The petitioner was the accused in C.C. No. 182/83 on the file of the J.M.F.C. Navalgund, and he will be hereinafter referred to as the "accused". On 10-5-82 at Nargund the accused was found transporting and possessing 23 1/2 gunny bags of admixture Jayalaxmi (DCH. 32) cotton which is prohibited in Nargund area. So, the cotton supervisor, Nargund, seized the said cotton seeds under a mahazar and reported the seizure to the C.J.M. Dharwar on 12-5-1982. He sent one portion of the sample to the cotton breeder, Dharwad, as per the provisions of the Mysore Cotton Control Act 1964 (hereinafter referred to as the "Act") for testing. The cotton breeder, Dharwar, after testing, reported that the seeds were admixture with Jayalaxmi (DCH. 32). Thereafter, the complainant obtained sanction from the Director of Agriculture to prosecute the accused. He received the sanction and authorisation dt. 24-2-83. Thereafter on 18-3-83 the complainant filed the complaint in the Court below against the accused for an offence under S. 6(1)(b)(ii) of the Act and Rule 9 of the Cotton Transport (Karnataka) Rules 1963. He also prayed for condonation of delay in filing the complaint stating that the period of six months had elapsed in obtaining test report from the cotton breeder, Dharwar and in obtaining sanction to prosecute the accused as required u/s 12 of the Act. On receipt of the complaint, the

learned Magistrate condoned the delay and took cognizance of the offence and when the accused appeared before him the accusation for the said offence was put to him. The accused pleaded guilty to the said accusation. Accepting his plea, the learned Magistrate convicted him on both counts and sentenced him to pay a fine of Rs. 75/- on each count or in default to undergo simple imprisonment for 7 days on each count. Hence, this revision petition by the accused.

2. Mr. S. S. Patil, learned counsel for the petitioner urged that the learned Magistrate ought to have issued notice to the accused before taking cognizance of the offence and ought to have heard him on the question whether the delay should be condoned or not and as he has not done so, the proceedings before the learned Magistrate are vitiated.

3. Mr. Koti, learned High Court Government Pleader, urged that as the accused has pleaded guilty he is deemed to have waived his right of contesting the decision of the learned Magistrate on the question of condonation of delay.

4. Section 468 of the Cr.P.C. 1973 (for short the "Code") prescribes the period of limitation for taking cognizance and imposes a bar on the Court in taking cognizance of the offences which are brought to its notice after limitation period and S. 473 of the Code enables the Court to extend that period if it is satisfied that the delay has been properly explained. There is no provision for condonation of delay. But, once the period of limitation prescribed under the Code for launching the prosecution has expired, a valuable right accrues to the accused to the effect that there would be no prosecution thereafter. Therefore, even though there is no rule of law requiring the Court to issue notice to the accused to give him an opportunity of meeting the case of the complainant in regard to the extension of time, interest of justice and principles of natural justice require that the condonation of delay and extension of time must be done only after giving reasonable opportunity to the accused. The same is the view taken in *Bharat Hybrid Seeds and Agro Enterprises and Another Vs. The State, Krishna Sanghi and Others Vs. The State of Madhya Pradesh*,

5. In this case, the learned Magistrate has not heard the accused on the question of condoning the delay before taking cognizance. Therefore, the whole proceedings in the court below are vitiated as the Court could not have taken cognizance before condoning the delay and as the order condoning the delay has been passed *ex parte* without hearing the accused. Since, the taking of cognizance of the offence by the lower Court itself is without jurisdiction, the conviction and sentence although passed on the plea of guilt of the accused cannot be sustained. Hence I see no force in the contention of the learned High Court Government Pleader.

6. In the result, the petition is allowed and the conviction and sentence passed on the petitioner are set aside and the case is remitted to the lower Court for fresh disposal in the light of the above observations. The fine, if paid, shall be refunded to the petitioner accused.

7. Petition allowed.