
(2015) 02 JH CK 0067
In the Jharkhand High Court
Case No : Criminal M.P. No. 1476 of 2014

Makra Pator

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133
Limitation Act, 1963 — Section 5

Citation : (2015) 02 JH CK 0067

Hon'ble Judges : Prashant Kumar, J.

Bench : Single Bench

Advocate : V.P. Singh, Senior Advocate, for the Appellant; Vijay Kumar Gupta, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—This application has been filed for quashing the order dated 21.03.2014 passed by learned Sessions Judge, East Singhbhum, Jamshedpur in Cr. Revision No. 19 of 2014 whereby and whereunder the learned court below dismissed the revision application because the same is barred by delay of 152 days.

2. It appears that petitioner had challenged the order dated 14.06.2013 passed by learned Sub Divisional Magistrate, Ghatshila in Miscellaneous Case No. 32 of 2013 under section 133 of the Cr.P.C. It appears that the aforesaid revision filed in the court of learned Sessions Judge after the delay of 240 days. However, petitioner filed an application (Annexure-2) under section 5 of the Limitation Act for condonation of said delay, stating therein that since the learned SDM has not signed the order till 20.12.2013, therefore, the revision could not be filed earlier. Accordingly, it is prayed that the delay in filing the revision application be condoned.

3. It appears that learned revisional court perused the impugned order and found that the learned SDM had signed the said order on 14.06.2013, thus, the

revisional court had not accepted the allegations made by the petitioner that the said order signed by the learned SDM from back date. Accordingly, the court below rejected the condonation petition, consequently revision application also dismissed.

4. Sri V.P. Singh, Senior Advocate appearing for the petitioner submits that from perusal of Annexure-1, it is clear that when petitioner filed an application on 21.12.2013 before the Sub Divisional Magistrate impugned order was not signed by him. Accordingly he submits that the learned SDM signed the said order from back date after receiving Annexure-1. He further submits that the same fact was reiterated in the condonation petition (Annexure-2) filed before the learned Sessions Judge, but the learned Sessions Judge without issuing notice to other party, rejected the condonation application on the ground that the order signed by the SDM bears the date of signing i.e. 14.06.2013. Sri Singh submits that Hon"ble Apex Court had held in a judgment reported in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, that it is the duty of the court to take liberal view in the matter of condonation of delay, so that the actual dispute between the parties could be decided. Accordingly, Sri Singh submits that the impugned order cannot be sustained.

5. Learned Additional P.P. opposed the prayer.

6. Having heard the submissions, I have gone through the record of the case. It is not in dispute that Sub Divisional Magistrate, Ghatsila gave a date i.e. 14.06.2013 below his signature. Thus, prima facie, it appears that the said order has been passed on 14.06.2013. The counsel for the petitioner strongly relied upon Annexure-1 of this application to show that on 14.06.2013, no order passed by the learned Sub Divisional Magistrate. I have carefully perused Annexure-1. It reveals from Annexure-1 that petitioner has no where stated that till 20.12.2013, no order passed by the learned Sub Divisional Magistrate. The entire application filed by the petitioner before learned Sub Divisional Magistrate on 21.12.2013 reads as under:-

Date 21-12-2013

To,

The S.D.O. Ghatsila

Sub:-Complain against case No. 32/2013, P.S. Under section 133 Cr.P.C.

Place of Incident:-SCS/B-2, Surda New Township

Respected Sir,

As our union office have been re-opened by Sri. Gouranga Mahali, repeatedly three times, firstly on 14-07-2013, secondly 30.09.2013, thirdly 20.12.2013, on the sub-judice condition under your Court, you have assured to pass order on 14.06.2013, we are peace loving representatives awaiting your response at your end oblige and for this act of your kindness I shall be ever grateful to you for

ever.

Yours faithfully (MAKRA PATAR) OFFICE SECRETARY

Office Secretary MOSABANI MINES LABOUR UNION

7. From the plain reading of the aforesaid application, I find that the petitioner has nowhere alleged that the SDM had not passed any order on 14.06.2013 rather from perusal of the same, it appears that opposite party is using the disputed premises by re-opening the same on different dates. From the aforesaid acts of opposite party one can infer that opposite party is knowing about the said order which was passed in his favour.

8. It is worth mentioning that petitioner has not brought on record anything to show that on 14.06.2013, he has applied for certified copy of the order passed by learned SDM and the same has not been delivered to him because the order was not signed by the Presiding Officer. It is also worth mentioning that no evidence laid by the petitioner in support of his allegation that the learned Sub Divisional Magistrate passed order from back date.

9. In that view of the matter, I find that the learned Sessions Judge has rightly rejected the condonation application filed by the petitioner because in the said application he made wild allegation against the presiding officer and that too without any proof.

10. Thus, I find no merit in this application, accordingly the same is dismissed.