

(2011) 12 UK CK 0061

In the Uttarakhand High Court

Case No : Special Leave to Appeal No. 78 of 2011 with Criminal Appeal No. 155 of 2011 with Delay Condonation Application No. 799 of 2011

Manoj Tyagi

APPELLANT

Vs

Ashu Singhal

RESPONDENT

Date of Decision : 14-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(4), 482

Citation : (2011) 12 UK CK 0061

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon''ble Prafulla C. Pant, J.—This is Delay Condonation Application No. 799 of 2011 for condonation of delay in filing appeal against the order of acquittal recorded by the trial court (Judicial Magistrate, Roorkee) on 31.10.2008, in Criminal Complaint Case No. 163 of 2008.

2. Heard.

3. Registry has reported that there is 930 days delay in filing the appeal. In other words, more than two and half years delay is there, in filing the appeal. The respondent has vehemently opposed the application.

4. Affidavit filed by Manoj Tyagi in support of Delay Condonation Application simply shows that since petition u/s 482 of Cr.P.C (No. 505 of 2009) was dismissed on 13.07.2011, with liberty to file an appeal, as such, the delay is liable to be condoned. Apparently it looks as if the 482 petition is filed due to inadvertence instead of filing the appeal, but on going through the papers on record, this court finds that explanation given for filing of delay is not bonafide. The reason being that, after the criminal complaint was dismissed by the Magistrate, on 31.10.2008, instead of filing an appeal the present appellant (complainant) filed Criminal Revision No. 561 of 2008, which was dismissed by

Additional Sessions Judge/1st Fast Track Court, Roorkee, on 29.04.2009, whereafter, the petition u/s 482 of Cr.P.C., was filed.

5. On going through the order dated 29.04.2009, passed by the revisional court it is clear that the revision was dismissed by the court of sessions on the ground that appeal could have been filed by the complainant u/s 378(4) of Cr.P.C., as such, the reason was maintainable. The observation made by the revisional court in its order dated 29.04.2009, makes it clear that the complainant had no reason not to file appeal against acquittal in a complaint case after 29.04.2009, before this court, even after said observation been on the record, still the complainant did not prefer to file appeal, instead he choose to file a petition u/s 482 of Cr.P.C., and prosecuted it for two years, whereafter it was withdrawn with liberty to file the appeal.

6. In the circumstances, particularly when there is no explanation in the affidavit filed with the Delay Condonation Application as to why the appeal was not filed even after the observation made by the revisional court in its order dated 29.04.2009, and what made the complainant to filed the 482 petition, it can not be said that the delay in filing appeal is sufficiently explained on the record.

7. Therefore, the Delay Condonation Application is rejected, the appeal also alongwith leave to appeal no. 78 of 2011 stands dismissed as barred by time.