

(2020) 11 CHH CK 0007

In the Chhattisgarh High Court

Case No : Criminal Misc. Petition No. 744 Of 2014

Radhe Shyam Khemka And Ors

APPELLANT

Vs

Raju Yadav alias Ram Kumar And Ors

RESPONDENT

Date of Decision : 19-11-2020

Acts Referred:

Limitation Act, 1963 — Section 2(l), 5, 14, 14(1), 14(2)
Code Of Criminal Procedure, 1973 — Section 378(4), 470(1)
Indian Penal Code, 1860 — Section 420, 467, 468, 471

Citation : (2020) 11 CHH CK 0007

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Hari Agrawal, B.L. Dembra, Ravi Kumar Bhagat

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J

1. This petition is directed against the order dated 18-7-2014 passed by the 2nd Additional Sessions Judge, Raipur in an unregistered criminal revision

in the matter of Radheshyam Khemka v. Raju Yadav alias Ram Kumar and another, whereby the petitioner's / complainant's application filed

for condonation of delay read with Section 14 of the Limitation Act, 1963 has been rejected and consequently, the revision petition against the

discharge of respondent No.1 has also been dismissed.

2 Mr. Hari Agrawal, learned counsel appearing for the petitioner, would submit that the revisional Court is absolutely unjustified in not condoning the

delay by taking liberal view of the matter and also went wrong in not extending the benefit of Section 14 of the Limitation Act, 1963 for the period

from 2-5-2013 to 26-8-2013 during which period Cr.M.P.No.459/2013 was

pending before this Court, as such, the impugned order deserves to be set aside by condoning the delay after extending the benefit of Section 14 of the Limitation Act, 1963 and the matter be remanded to the revisional Court for hearing the revision petition on merits.

3 Mr. B.L. Dembra, learned counsel appearing for respondent No.1 / accused and Mr. Ravi Kumar Bhagat, learned Deputy Government Advocate

appearing for respondent No.2 / State, would submit that application of Section 14 of the Limitation Act, 1963 is restricted only to civil proceeding and

that principle can be applied to appeal or revision arising from civil proceeding, but in no case, it can be extended to the criminal proceeding, as such,

the application for condonation of delay has rightly been rejected, as against the discharge of the accused / respondent No.1 on 6-6-2011, the petitioner

preferred application for grant of leave to appeal vide Cr.M.P.No.459/2013 before this Court with a delay of 2 years and no explanation has been

given for such a delay in filing the application for grant of leave to appeal. As such, the revisional Court has rightly declined to condone the inordinate

delay in filing the application for grant of leave to appeal and therefore this petition deserves to be dismissed.

4 I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

5. It is not in dispute that respondent No.1 / accused was discharged on 6-6-2011 against which the petitioner filed application for grant of leave to

appeal namely Cr.M.P. No.459/2013 on 2-5-2013 with a delay of approximately 2 years, but that application was dismissed as withdrawn with liberty

to file appropriate petition, on 26-8-2013 against which the petitioner preferred revision on 12-11-2013 with an application for condonation of delay

under Section 5 read with Section 14 of the Limitation Act, 1963 which has been dismissed by the revisional Court finding that the application for grant

of leave to appeal was filed before this Court with a delay of approximately 2 years and Section 14 of the Limitation Act, 1963 has no application.

Section 14 (1) and (2) of the Limitation Act, 1963 provides as under: -

â??14. Exclusion of time of proceeding bona fide in court without jurisdiction. â?" (1) In computing the period of limitation for any suit the time during

which the plaintiff has been prosecuting with due diligence another civil

proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

2. In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil

proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such

proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.â??

6. The principle of Section 14 of the Limitation Act, 1963 is the protection against the bar of limitation of a person honestly doing his best to get his

case tried on the merits, but failing through the Court being unable to give him such a trial. Section 14 provides for exclusion of time spent in

proceedings bona fide, in a Court which lacked jurisdiction. The aims and objectives of the said provision are to afford protection against the bar of

limitation to a litigant who was honestly prosecuting the lis before a Court which had no jurisdiction to grant the relief prayed for. The principle

underlying the said provision is that limitation will remain in suspense while the litigant was bona fide prosecuting for his rights in a Court of justice due

to wrong advice. Section 14 of the Limitation Act, 1963 contains a general principle based on justice, equity and good conscience and the said principle

should be applied without strict regard to the period of limitation prescribed. A person prosecuting under a mistake of law is entitled to the benefit of

Section 14 whereas while dealing with a petition filed under Section 5 of the Limitation Act, a Court has to be satisfied that there was reasonable

ground for approaching the Court late and that each day of delay is more or less explained. Thus, exclusion of time under Section 14 of the Limitation

Act is mandatory once the conditions precedent prescribed in Section 14(1) are satisfied, whereas the Court's power under Section 5 of the Limitation

Act is discretionary. Section 14(1) has been made applicable to any suit and â?? suitâ?? has been defined in Section 2(l) of the Limitation Act, 1963 and

it does not include an appeal or an application. However, the Supreme Court in the matter of J. Kumaradasan Nair and others v. IRIC Sohan and

others AIR 2009 SC 1333 has held that Section 14(1) of the Limitation Act, 1963

is applicable only in suits in view of the definition of suit contained in Section 2(l) of the Limitation Act, 1963, but the principle thereof would be applicable for the purpose of condonation of delay in filing revision application in terms of Section 5 thereof.

7 Now, the question would be, whether in a criminal proceeding, Section 14(1) of the Limitation Act, 1963 would be applicable?

8 Section 14(1) of the Limitation Act, 1963, as noticed herein-above, is only applicable to suits and by virtue of the principle of law laid down by their

Lordships of the Supreme Court in J. Kumaradasan Nair (supra), it has been made applicable to revision or appeal arising out of the said proceeding,

but its application is restricted only to civil proceeding, it does not apply to the criminal proceeding stretching beyond the civil proceeding and by virtue

of Section 14(1), appeal or revision (civil), by virtue of the decision of the Supreme Court in J. Kumaradasan Nair (supra), it would be stretching too

much to hold that it should also be applicable in criminal proceeding.

9 In the matter of Sakhichand Sahu and others v. Ishwar Dayal Sahu and others AIR 1967 Patna 351, the Division Bench of the Patna High Court

has clearly held that the period spent in prosecuting an application in revision before the Sessions Judge or District Magistrate cannot be excluded in

computing the said period of ninety days, until Section 14 of the Limitation Act, 1963 is suitably amended by the Parliament.

(j) Thus, the applicability of Section 14(1) of the Limitation Act, 1963 is confined to suit and appeal or revision, it cannot be made applicable to criminal

proceeding like revision. However, Section 470(1) of the Code of Criminal Procedure, 1973 provides that in computing the period of limitation, the time

during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or

revision, against the offender, shall be excluded.

(k) Having noticed the aforesaid legal position, reverting to the facts of the case, respondent No.1 was discharged on 6-6-2011 by the jurisdictional

criminal court from the offences under Sections 420, 467, 468 & 471 of the IPC against which the original petitioner preferred application for grant of

leave to appeal (Cr.M.P.No.459/2013) with a delay of only two years on 2-5-2013 which was dismissed as withdrawn with liberty to file appropriate

petition on 26-8-2013 and again the petitioner filed revision on 12-11-2013

which has been dismissed declining to extend the benefit of Section 14 of the Limitation Act, 1963 finding that the petitioner for the first time filed application for grant of leave to appeal (Cr.M.P.No.459/2013) before this Court with a delay of approximately 2 years with no sufficient reason for delay in filing the same and therefore Section 14 of the Limitation Act, 1963 cannot be applied. In the considered opinion of this Court, firstly, there is delay of approximately two years from 6-6-2011 to 2-5-2013 in filing the application for grant of leave to appeal before this Court filed under Section 378(4) of the Code of Criminal Procedure, 1973 for which there is no satisfactory explanation offered before the revisional Court in revision and secondly, the provisions of Section 14 of the Limitation Act, 1963 are not applicable to criminal proceeding like revision and the provision contained in Section 470(1) of the CrPC would be applicable. Assuming it otherwise, the petitioner has failed to explain the inordinate delay from 6-6-2011 to 2-5-2013 for more than two years in filing the application for grant of leave to appeal, as no sufficient reason has been assigned for delay of two years in filing the application for grant of leave to appeal questioning the order of discharge of respondent No.1.

(I) The Supreme Court in J. Kumaradasan Nair (supra) has held that the court will not apply the beneficent provisions like Sections 5 and 14 of the Limitation Act in a pedantic manner. It is true that sufficient cause has to be construed liberally, but it should be considered whether the person prosecuting the proceeding is himself negligent or is not acting bona fide. A careful perusal of the record would show that the petitioners have failed to demonstrate any sufficient reason for delay of two years in questioning the order of discharge. As such, the revisional Court is absolutely justified in dismissing the revision and rightly held that sufficient cause has not been shown for delay of two years in filing the application for grant of leave to appeal, as Section 14 of the Limitation Act, 1963 has no application in criminal proceeding. I do not find any merit in this petition, it deserves to be and is accordingly dismissed.