

(2004) 12 MP CK 0071

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 1664 of 2004

Raghuveer and Others

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 15-12-2004

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2005) 1 MPJR 351

Hon'ble Judges : U.C Maheshwari, J

Bench : Single Bench

Advocate : Pramod Thakre, for the Appellant; L.D.S. Baghel, Panel Layer, for the Respondent

Final Decision : Allowed

Judgement

U.C. Maheshwari, J.

Being aggrieved by the order dated 21.9.04 passed by the learned Sessions Judge, Chhindwara in M.J.C. No. 160/04 whereby the application filed by the present applicants u/s 5 of the Limitation Act has been dismissed, and in pursuance of that the appeal of the appellants, filed against the judgment 26.6.2004, passed by the CJM, Sausar District Chhindwara in criminal case No. 204/1999, whereby the present applicants were found guilty u/s 325/34 of I.P.C. and awarded sentence of one year R.I. with a fine of Rs. 250/-, was also dismissed, this revision petition is preferred u/s 397/401 of the Cr.P.C.

As per prosecution case on 2.3.1999 at 4 O'clock in the evening when victim Tarachand was taking his cattle for grazing in the field near to the agriculture land of Kanhai Patel, at the same time the present applicants came there by saying some abusive language and alleging something against the victim and started beating him by knife, chain and stick. Resultantly many injuries on different parts of the body of the victim were caused. The victim was beaten by leg and chest also. Subsequently, the matter was reported to the police, Bichhua.

Applicants were arrested and after holding investigation the charge sheet was submitted. In sequence of this trial was held and by delivering judgment the trial court convicted all the applicants, as said above. Against that applicants filed an appeal before the appellate court alongwith an application u/s 5 of Limitation Act for condoning the delay in filing the appeal.

Learned appellate court registered the case as M.J.C. NO. 160/04 and by deciding the said application for condonation of delay, the same has been dismissed. In pursuance of that said appeal was also dismissed without consideration of the merits of the case.

After having heard learned counsels of the parties I allowed this revision petition for the following reasons.

(a) That reasons mentioned by applicants in the application filed u/s 5 of Limitation Act have not been considered in justice oriented approach and dismissed the application by wrong consideration.

(b) As per settled law the approach of the court should be pragmatic and justice oriented and case should be decided on merits and persons should not be deprived merely on the ground of some technicalities. When I examined the case in hand in view of the said forgoing principle then I found that appellate court not invoked vested jurisdiction with a justice oriented approach.

My above said views are based on a reported case of 1996 C.L.T. 3 62 (S.C.) in which the Apex Court has held as under:

Although the said reported case is based on civil litigation but analogy and interpretation of said section is applicable to criminal case like case in hand.

According to the record of the appellate court, no enquiry was made in relating to the grounds mentioned in said application of the applicants.

When the rights of citizen like the applicants relating to the opportunity of hearing on merits was involved, was not given. For that no cogent and proper reasons have been given by appellate court and whatsoever reasons given by passing a very lengthy order, are not reasonable as stated above.

In the aforesaid premises this revision petition deserves to be allowed and is allowed and the impugned order is hereby set aside. The said application filed by the applicants before the appellate court is allowed and delay is condoned in filing the appeal.

As delay has already condoned, then the consequence is only remand the matter again to the appellate court to decide afresh on merits. I therefore, remit this matter to the appellate court to decide appeal on merits alongwith this direction that the appellate court take endeavour to decide this appeal within a period for three months from the date of receiving the order and record.

It is reported by the counsel of the applicants that the applicants are suffering

the jail imprisonment since the date of judgment of appellate court and prays that till disposal of appeal applicants may be directed to be released on bail.

The prayer is reasonable because during the pendency of appeal the applicants were on bail and, therefore applicants' prayer is allowed and directed that if each applicants furnishes a personal bond of Rs.5,000/ (Five thousand) alongwith the surety of the like amount to the satisfaction of appellate court, then they be released on bail till disposal of said appeal and after releasing from the jail all the applicants are directed to remain present before the appellate court as per direction of appellate court.

The records of the case be sent immediately to the appellate court. Counsels of the applicants and the State are directed to appear before the appellate court on 5.1.2005.

This revision is allowed, as intended above.