
(2013) 03 BOM CK 0182

In the Bombay High Court

Case No : Criminal Application No. 4381 of 2012

Rajesh @ Prabhuraja

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 22-03-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 372, 378
Income Tax Act, 1961 — Section 11, 11(4A), 12, 12A, 2(15)
Limitation Act, 1963 — Section 5
Penal Code, 1860 (IPC) — Section 323, 324, 354, 452, 504

Citation : (2013) ALLMR(Cri) 1937

Hon'ble Judges : K.U. Chandiwal, J

Bench : Single Bench

Advocate : V.D. Sapkal, for the Appellant; D.R. Korde, APP for State and Mr. S.J. Salunke, for the Respondent

Judgement

K.U. Chandiwal, J.—Heard. Rule returnable forthwith by consent of parties. The applicant was acquitted in Criminal Case No. 401/2006 on 29.1.2009 for offence under Sections 452, 354, 323, 504 of Indian Penal Code. The State did not file any appeal.

2. Respondent No. 2 approached the learned District Judge, canvassing the application to be u/s 378 of Cr.P.C. Additionally, Respondent No. 2 sought to condone delay of two years six months and 28 days, caused in preferring to file an appeal. The learned Sessions Judge, Jalna entertained Misc. Application No. 72/2011 and by order dated 13.9.2012, condoned the delay in terms of Section 5 of the Limitation Act. The applicant questions legality of the same.

3. Another limb, apart from legality of condoning the delay, learned Counsel for the applicant has informed, special leave to file appeal or appeal u/s 378 or 372 proviso of Cr.P.C. could not have been entertained by the learned Sessions Judge. This is more so, the judgment being of 29th January, 2009, the appeal by the victim was filed belatedly on 25.11.2011 and the learned Judge has condoned

the delay on 13th September, 2012 while the amendment to the Cr.P.C. in proviso to Section 372 (providing right to victim to prefer an appeal) has come into force on 31.12.2009.

4. Mr. Salunke, learned Counsel for Respondent No. 2, says, the prayer clause in the present application speaks to turn down the application for condoning the delay and consequently, the legal point in respect of maintainability of the appeal should not be considered, it should be left to the learned District Judge. According to him, liberal approach is contemplated in respect of condonation of delay. Learned Counsel has placed reliance to the judgment of the Hon"ble Apex court in N. Balakrishnan Vs. M. Krishnamurthy, , to impress his point.

Said case before the Apex Court basically was arising out of rights in civil area between the parties. Ex parte decree was passed against the appellant without any communication by the advocate. There was delay of 883 days. The appellant has even prosecuted his advocate before the Consumer Forum, where he received compensation of Rs. 50,000/- from the defaulting advocate. He later moved for excusing delay of 883 days. It was in this scenario, the Hon"ble Lordships of the Supreme Court explained exercise of discretion u/s 5 of the Limitation Act while condoning the delay, more elaborately giving interpretation to "sufficient cause" u/s 5 of the Act.

The Lordships have also observed, -"It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding. Much less in revisional jurisdiction unless the exercise of discretion was on wholly untenable ground or arbitrary or perverse."

5. The application seeking to condone delay in paragraph 2 display that Respondent No. 2 had no knowledge of the judgment. She could not prosecute the proceedings as she is illiterate. No sooner she got knowledge of such acquittal, she applied for copy application on 17.10.2011 and received the copy on 5.11.2011.

6. During the course of submissions before the learned Sessions Judge, it was specifically pointed that, at the time of recording the judgment on 29.1.2009 in the said criminal case, the Respondent No. 2 was present in the Court hall. Thus, she had knowledge of the acquittal as on 29.1.2009. The applicant has contended, the cause for preferring to file the appeal or seeking to condone the delay has occasioned only due to conviction recorded in appeal on 2nd February, 2011 to the husband and her relations for offence under Sections 354, 324, 552

of IPC.

7. The learned Sessions judge, while recording its finding in para 5 or 6 of the judgment, did not advert to these basic concepts/aspects raised by the applicant. On the other hand, in para 6, the learned Judge indicated, - "Therefore, it is but natural that the victims may not be able to know the decision of their case immediately after the decision is given by the Court." These sweeping observations, are prima facie contrary to the record. There was no such sufficient reasons explained by Respondent No. 2 to seek condonation of delay.

8. The observations of the Hon"ble Supreme Court, in respect of foreclosing a suiter from putting-forth his cause to be considered as a ground for condoning the delay, needs no contest. However, here picture demonstrate only as a ruse due to conviction of relations of Respondent No. 2 Baban and Satish, the efforts of preferring the appeal were put in acceleration. It was not remonstrance of the right, but demonstration of a vengeance.

9. Now, turning to the point of maintainability of the appeal, I find force in the narration of Mr. Sapkal, learned counsel. The Judgment, as stated earlier, is dated 29.1.2009; applicability of amendment to Section 372 has come into effect on 31.12.2009, when the learned Judge has condoned the delay or accepted to admit the appeal. There was no situation u/s 378 Cr.P.C. To entertain the appeal. The amended provisions cannot be applied retrospectively. Legal position is explained by the Apex Court in the matter of National Commission of Women Vs. State of Delhi and Another, ; by the Division Bench of this Court in the matter of Balu Uligappa Batteli Vs. State of Maharashtra - 2012 ALL MR (Cri) 3291 ; the learned Single Judge of this Court in the matter of Nandabai Warat Vs. Maruti Gopala Mehetre, has also taken same view.

10. The legal position, which is explained in para 6 of the decision the matter of P.K. Ramachandran Vs. State of Kerala and Another, , also needs consideration. Para 6 reads thus:

6. Law of limitation may harshly effect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time. No costs.

The sum total is, there was no sufficient cause demonstrated by Respondent No. 2 to condone the delay. The appeal before the learned District Judge was not maintainable. Criminal Application allowed as above. Rule is made absolute in aforesaid terms.