
(2011) 06 SHI CK 0037

In the High Court Of Himachal Pradesh

Case No : Criminal Revision No. 64 of 2011

State of Himachal Pradesh

APPELLANT

Vs

Sita Ram Yadav and Another

RESPONDENT

Date of Decision : 21-06-2011

Acts Referred:

Limitation Act, 1963 — Section 5

Penal Code, 1860 (IPC) — Section 120B, 409, 468, 471

Citation : (2011) 2 ShimLC 288

Hon'ble Judges : Dev Darshan Sud, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dev Darshan Sud, J.—This revision petition has been filed by the State challenging the order passed by the learned Additional Sessions Judge, Fast Track Court, Kullu, dismissing the application u/s 5 of the Limitation Act challenging the acquittal of the respondents herein for offences under Sections 409, 468, 471, 120-B IPC.

2. Before advertng to the application u/s 5 of the Limitation Act, I must note that the learned trial Court has acquitted the accused on a number of grounds including the fact that the audit report forming the basis of the prosecution case was not based on factual realities and cash books etc. was not proved on record. Putting that aside, the delay is of 7 months 23 days which is sought to be explained in the most casual manner and the application, if considered, does not stand the scrutiny of law. The only ground urged for delay is:

2. That there is delay of 7 months and 23 days of filing the present appeal which is due to examination of the judgment at different levels of Government.

3. That the delay is neither intentional nor deliberate but due to the fact that different govt. agencies are involved therein.

4. Besides this, the accused/respondent has damaged the state economy. The

appellant state is aggrieved. The state funds have been used by the respondent/accused as if they were private funds, hence the transaction was not legitimate. Resultantly, the act of the accused/respondent has serious repercussions on the economic system of the state/appellant. The trial Court has not viewed this "White collar" crime seriously and sternly and has acquitted the accused in a slipshod manner, hence this appeal perforce.

5. That the case is of public importance " and huge govt. money has been misappropriated by the respondent/accused which has adversely affected the appellant/State.

3. I have heard learned Deputy Advocate General for the State and learned Counsel appearing for the respondents.

4. I must express my surprise not only at the fact that the case has been dealt with in a most casual and nonchalant manner, but also no attempt or effort has been made by the State to explain as to why such delay occurred. The "raison d'etre" is contained in two paras; namely; that the judgment had to be examined by different people at different levels of the Government and that the respondents have caused damage to the State economy. These general appellations do not form the heart and core of the principles required to explain the quality of delay which has occurred in instituting the appeal. Why such a long period of time was spent is not clear. As to who those Government Agencies were, not one word has been mentioned. The law on the point is by now well settled in *Balwant Singh (Dead) Vs. Jagdish Singh and Others*, holding that it is the quality of delay which has to be explained. The Court holds:

37. We feel that it would be useful to make a reference to the judgment of this Court in *Perumon Bhagvathy Devaswom* (supra). In this case, the Court, after discussing a number of judgments of this Court as well as that of the High Courts, enunciated the principles which need to be kept in mind while dealing with applications filed under the provisions of Order 22, CPC along with an application u/s 5, Limitation Act for condonation of delay in filing the application for bringing the legal representatives on record. In paragraph 13 of the judgment, the Court held as under.

13 (i) The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words "sufficient cause" in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant.

(ii) In considering the reasons for condonation of delay, the Courts are more liberal with reference to applications for setting aside abatement, than other cases. While the Court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it

will not punish an appellant with foreclosure of the appeal, for unintended lapses. The Courts tend to set aside abatement and decided the matter on merits. The Courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.

(iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.

(iv) The extent or degree of leniency to be shown by a Court depends on the nature of application and facts and circumstances of the case. For example, Courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The Courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of Courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in re-filing the appeal after rectification of defects.

(v) Want of "diligence" or "inaction" can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, Courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the Court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his Counsel about the listing of the appeal.

We may also notice here that this judgment had been followed with approval by an equi-bench of this Court in the case of Katari Suryanarayana (supra)

38... Delay is just one of the ingredients which has to be considered by the Court. In addition to this, the Court must also take into account the conduct of the parties, bona fide reasons for condonation of delay and whether such delay could easily be avoided by the applicant acting with normal care and caution... (pp.699-700)

I need not delve into the matter any further as I note from the pleadings that generalizations are no substitute for the realities to be pleaded and proved. It is the State which must look to its agencies and then find as to why delay has occurred rather than filing application in Court which convey no meaning. There is, thus, no merit in this petition which is dismissed.