

(2020) 07 J&K CK 0041

In the Jammu And Kashmir High Court

Case No : SLA No. 6 Of 2019, CrI LP No. 1 Of 2019, CRAA No. 5 Of 2019,
CONCR No. 11 Of 2019

State Of J&K

APPELLANT

Vs

Tariq Ahmad Mian And Others

RESPONDENT

Date of Decision : 29-07-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161

Citation : (2020) 07 J&K CK 0041

Hon'ble Judges : Rajesh Bindal, J; Rajnesh Oswal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajnesh Oswal, J

1. The present application has been filed seeking condonation of delay of 657 days in filing the appeal against the judgment of acquittal recorded by the Trial Court on 03.04.2017. A perusal of the application reveals that the Law Department had accorded sanction for filing the acquittal appeal vide order No. 2978-LD(ACQ) of 2017 dated 21.07.2017. However, the said appeal came to be filed only on 25.04.2019. The only explanation that has been furnished by the applicant/appellant is that after the sanction was accorded, delay was occasioned due to the time consumed for collecting the relevant record for filing the present appeal. Besides this, there is no explanation for this inordinate delay of 657 days. This can hardly be said to be satisfactory explanation for condoning huge delay of 657 days in filing the present application seeking leave to appeal. It only shows total casualness on the part of the officers/officials concerned as if none is responsible and accountable in the Union Territory of Jammu & Kashmir for any action or inaction. Unless the persons are held accountable, the culture to work will not start.

2. Further, we have also gone through the judgement of acquittal recorded by the Trial Court. On 19.12.2018, some gun shots were heard in Police Station,

Pattan and soon reliable source reported that one Abdul Rashid Mian, who was engaged as Special Police Officer had been killed by un-known gunmen, who was part of Police Team assigned with the investigation of the case arising out of FIR No. 371/1998 and accordingly F.I.R No. 375/1998 was registered and investigation was handed over to PW-14. During investigation it was found that respondent No. 1 and deceased had some old animosity as nephew of respondent No.1 was killed by some un-known gunmen and deceased was suspected to be behind that murder. The charge-sheet was filed against the accused. On 25.08.1999, the respondents were formally charged and prosecution was directed to lead evidence after the respondents pleaded not guilty.

3. Out of the 17 listed prosecution witnesses, only 05 prosecution witnesses were examined by the prosecution. Those include PW-Mohd. Ramzan Miaan, PW-5Mohd. Yousuf, PW-9 Mohammad Rajab Gojree, PW-11 Mst. Rafeeqah & PW-12 Mst. Mokhti and except these witnesses neither the Investigating Officer nor the Doctor has been examined by the prosecution and there is absolutely no explanation for their non-examination.

4. PW-Mohd. Ramzan Miaan has claimed himself to be the eye witness but because of his unnatural conduct and also because he made material contradictions while deposing before the Trial Court regarding the occurrence vis-à-vis his statement made under Section 161 CrPC, the Trial Court rejected his testimony. PW Mohd Yusuf and PW Mst Rafeeqah have turned hostile but despite cross-examination by PP, no material could be elicited from them against respondents. PW Mokhti (mother of the deceased) before the Trial Court claimed to be an eye witness but in her statement under Section 161 CrPC, it was mentioned that she was at home and she had no personal knowledge. The said lady denied this fact but changed her stand on material aspects of the case during her cross-examination at different stages. The Trial Court rejected her testimony as well. PW Mohammad Rajab Gojree did not state anything against the respondents. This is the only evidence led by the prosecution.

5. The respondents examined three witnesses in their defence who are none else than the PW Nos. 3, 4 & 16.

6. After appreciating the entire evidence and taking in to consideration non-examination of the Investigating Officer and the Doctor, the learned Trial Court acquitted the respondents vide judgment dated 03.04.2017. In view of the facts and circumstances of the case, the Trial Court rather had no option but to acquit the respondents particularly when neither the Doctor nor IO was examined by prosecution. The learned Sr. AAG has not been able to point out any infirmity in the judgment that warrants interference. We are of the view even if the delay is condoned, the main appeal is destined to fail on merits as well as there is no infirmity in the judgment passed by the Trial Court. In fact non production of material official witnesses in court during trial prima facie shows some connivance of the prosecution with the accused. It is for the department to look into this matter so that the confidence of people in criminal justice system is

sustained.

7. Consequently, the application for condonation of delay is misconceived and the same is dismissed, leading to the dismissal of application seeking leave to file appeal along with appeal as well.