

(1984) 11 CAL CK 0010
In the Calcutta High Court
Case No : Govt. Appeal No. 29 of 1981

State of West Bengal

APPELLANT

Vs

Khandu Bhunia and Others

RESPONDENT

Date of Decision : 20-11-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 248(1), 354, 378, 378(3), 454
Limitation Act, 1963 — Section 12, 5
Railway Property (Unlawful Possession) Act, 1966 — Section 3(a)

Citation : 89 CWN 214

Hon'ble Judges : N.G. Chaudhuri, J;G.C. Chatterjee, J

Bench : Division Bench

Advocate : A.R. Mondal and Sudipto Maitra, for the Appellant; Dipak Kr. Sengupta and Amit Talukdar, for the Respondent

Final Decision : Dismissed

Judgement

N.G. Chaudhuri, J.—This is an appeal by and on behalf of the State of West Bengal u/s 378 Cr. P.C. 1973. The memorandum of appeal was filed on 17th of July 1981. There in two orders have been described as orders under challenge, viz., an order dated 28.11.80 passed in Case No. UR946/73 by the learned Judicial Magistrate, 4th Court, Midnapore, acquitting the accused opposite parties of an offence u/s 3(a) of the Railway Properties (Unlawful Possession) Act 1966 and another order dated 31.1.81 passed by learned Additional Sessions Judge, Midnapore, in Criminal Appeal No. 3 of 1981 directing that the goods seized be returned to accused Khandu Bhunia. Along with the memorandum of appeal an application for leave u/s 378(3) of the Cr. P. C. was filed simultaneously on 17.7.81. The final order passed in case No. UR 946/73 by the Judicial Magistrate earlier mentioned may be conveniently, quoted below that accused Ganga Benia, Khadu Bhuinya and Korobi Show are found not guilty of offence u/s 3(a) RP (UP) Act. The accused persons are hereby acquitted in accordance with the provision of section 248(1) Cr. P. C. Let the unclaimed properties be confiscated to the State."

In so far as the order confiscated certain goods to the State Khandu Bhunia preferred an appeal u/s 354 of the Code in the court of Sessions Judge and on transfer learned Additional Sessions Judge by his order dated 31.1.81 allowed the appeal on contest and set aside the order in so far as the same directed confiscation of goods to the State Government. The Additional Sessions Judge on the contrary directed return of the goods to Khandu Bhunia, the appellant.

2. At the time of filing the appeal the appellants noticed that the appeal was time barred, but made no application with a specific prayer for condonation of delay u/s 5 of the Limitation Act. As a matter of fact, the point of limitation did not attract the notice of the Court when the appeal was admitted. When we were getting ready to hear the appeal on merits. Mr. Dipak Sengupta the learned Advocate assisted by his learned junior Mr. Amit Talukdar raised the point of limitation and submitted that the appeal on the date of its filing was hopelessly barred by limitation. We accordingly heard both sides only on the point of limitation.

3. When we proceed to consider the plea of limitation we should emphasise, as desired by Mr. SenGupta, that this appeal has been filed by and on behalf of the State of West Bengal. Affidavits in support of the application have been sworn by an Assistant working in the office of the Legal Remembrancer, Government of West Bengal, Now, on analysis of section 378 of the Cr. P. C. consisting of five sub-sections we find that this section deals with appeals in cases of acquittal. Sub-section (1) lays down that the. State Government may appeal against an original order of acquittal through the Public Prosecutor in the High Court. Sub-section (2) lays down cases in which the appeal against order of acquittal is required to be filed at the instance of the Central Government. Sub-section (3) thereafter lays down that appeals contemplated under the earlier two sub-sections are not to be entertained except with the leave of the High Court Mr. Sengupta, in this connexion, draws our attention to Article 114 of the Schedule to the Limitation Act 1963 and submits that the appeal is required to be filed within a period of 90 days from the date of the order. Laying stress on the date of the order appealed against, viz., 28.11.80 and the filing of the memorandum of appeals on 17.7.81 Mr. Sengupta contends that the appeal was filed long after the expiry of the period of 90 days prescribed. Mr. Sengupta contends that the memorandum of appeal is, therefore, liable to be rejected. Mr. Sengupta points out that the endorsements made on the typed copy of the judgment filed with the memorandum of appeal indicate that the copy as was certified after comparison on 17.12.80 and was handed over to the agent of the appellant on 18.12.80.

4. Mr. Sengupta then proceeds on to argue that various Statutes confers competence on various public servants to file complaints regarding violation of provisions contained in those statutes and offences committed in connexion with those statutes; and the framers of the Cr. P. C. aware of the above situation prescribed in subjections (4) and (5) that complainants could file appeals in

those cases where the cases originated from a petition of complaint and orders of acquittal were recorded Pressing before us sub-section (4) of section 378 of the Cr. P. C. Mr. Sengupta argues that in the event of such an appeal, the complainant may be a private person or public servant, but the appellant is required to obtain "special leave" as distinguished from "leave". Mr. Sengupta points out that in sub-section (5) the framers of the Code have made liberal provisions regarding the period of limitation of such appeals. Although under Article 114 of the Limitation Act the limitation prescribed for appeals against orders of acquittal is 90 days but under sub-section (5) in case of private complainants the period of limitation prescribed for obtaining special leave to appeal is 60 days and in case public servant complainants the period of limitation prescribed is six months to be computed from the date of the order of acquittal. Mr. Sengupta concedes for the sake of argument that in the present case the State Government could file the appeal against the order of acquittal, but he maintains with all the vigour at his command that the appeal. Was filed by the. State Government long after the expiry of the prescribed period of limitation, viz., 90 days and as such the memorandum of appeal is liable to be rejected. Mr. Sudipta Maitra the learned Advocate appearing for the State contends that as with the order of acquittal a direction regarding confiscation of goods under consideration was superadded. One of the accused filed an appeal in the court of Sessions Judge u/s 454 of the Code. He contends that the entire order was thus subjected to challenge and brought under consideration of the Sessions Judge in the relevant appeal, viz., Criminal Appeal No. 3 of 1981. He contends that because of the pendency of the appeal the State Government could not file the desired appeal against the order of acquittal u/s 378 and had to wait till Criminal Appeal No. 3 of 1981 was heard and disposed of by the Sessions Judge, Midnapore on 31.1.81. Mr. Maitra contends that the order passed by the Sessions Judge was to the prejudice of the State Government, so the State Government was advised to file appeal against the order of acquittal and also to move the High Court against the order of the Sessions Judge passed in exercise of his appellate power in relation to the order of acquittal Mr. Maitra submits that this was a sufficient cause explaining delay in filing the appeal and this Court should have no hesitation to condone the delay. This argument of Mr. Maitra does not impress us. Section 5 of the Limitation Act permitting condonation of delay in cases of satisfaction of the court regarding sufficiency of cause preventing the applicant from filing the appeal or application in time specifically contemplates a petition. We have already observed that no application was made for condonation of delay expressly. We will only emphasise that a prayer has to be made first before it is granted or refused. In the instant case no prayer was made for condonation of delay. We are, therefore, of the view that the appellant never made a prayer for condonation of delay in the matter of filing of the appeal and, therefore, did not take the requisite care in explaining the causes of delay with requisite details. This branch of argument advanced by Mr. Maitra is thus overruled. Mr. Maitra then proceeds on to argue that the prosecution of the respondents being under the provisions of the Railway Property (Unlawful

Possession) Act, the officer bringing to the notice of the Magistrate the commission of offence under the Act cannot be equated to the rank of officer-in-charge of the police station. He contends that the officer concerned is for all practical purposes a complainant. To drive on his point Mr. Maitra relies on the decision of the Supreme Court in the case of State of U. P. vs. Durga Prasad, reported in 1974 Criminal Law Journal 1465. He also relies on another Supreme Court decision in Balkishan A. Devidayal vs. State of Maharashtra, reported in Cr. L. J. (1980) SC 1424. He also relies on the decision of Rajasthan High Court in State of Rajasthan Vs. Kapoor Chand, . The decisions cited by Mr. Maitra do not appear to us to have any applicability to the facts and circumstances of the present case. We are not concerned with the question as to who was competent to bring to the notice of the learned Magistrate commission of offence under the Railway Property (Unlawful Possession) Act or if commission of such an offence could be brought to the notice of the Magistrate by filing of a complaint or otherwise. Those questions were to be canvassed before the trial court. We are concerned with the question as to who has actually filed the appeal; and regard being had to the character of the appellant how the period of limitation is to be computed. On the above question the records before us do not give rise to the slightest doubt. It is evident that the appeal was filed by the State Government on 17.7.81. The memorandum of appeal and the application for "leave" contemplated u/s 378(3) of the Code were filed simultaneously on the date as mentioned above. The appeal is directed against an order of acquittal recorded on 28.11.80. We have seen the certified copy was made over to the State Government agent on 18.12.80. We have seen that under Article 114 of the Limitation Act State Government was required to file the appeal within 90 days from the date of order. Even if we give the State Government benefit of the time spent in obtaining certified copy in view of the provision of section 12 of the Limitation Act we cannot escape the conclusion that the appeal was filed long after the expiry of the prescribed period of 90 days. If the appeal was filed long after the period of limitation and there was no prayer for condonation of delay and no sufficient cause has been made out for condonation of delay the memorandum of appeal should be rejected. Accordingly, we reject the memorandum of appeal. We do not proceed on to hear the appeal on merits.

The interim order of stay granted on 10.8.81 is vacated.

Gobinda Chandra Chatterjee, J.

I agree