

(2011) 09 SHI CK 0041

In the High Court Of Himachal Pradesh

Case No : Criminal M.P. (M) No. 1023 of 2010 in Cr. Revision No. 188 of 2010

Sunil Chandel

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 20-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Guardians and Wards Act, 1890 — Section 25
Limitation Act, 1963 — Section 5
Penal Code, 1860 (IPC) — Section 306, 34, 498A

Citation : (2012) 1 ShimLC 233

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldeep Singh, J.—This is an application u/s 5 of the Limitation Act for condonation of delay in filing Criminal Revision against judgment dated 9.3.2006 passed by Addl. Sessions Judge (Presiding Officer Fast Track Court), Solan in Case No.15FT/7 of 2005. The respondents No. 3 to 6 were prosecuted for offences punishable under Sections 498-A, 306 read with Section 34 IPC in Case No. 15 FT/7 of 2005 in the Court of learned Addl. Sessions Judge (Presiding Officer Fast Track Court), Solan and they were acquitted on 9.3.2006. The acquittal of respondents No. 3 to 6 has been assailed by applicant, who is complainant, by filing revision under Sections 397, 401 Cr.P.C. The revision is time barred and therefore, the application has been filed for condonation of delay in filing the revision.

2. The revision is barred by 4 years 3 months and 3 days as per Registry. It has been stated in the application that applicant is not a well read man. The family of the applicant is illiterate consisting of aged parents and wife. The applicant is bearing the expenses of maintaining master Himanshu male child of deceased Seema who met with an untimely and unfortunate death.

3. The summons were served on applicant by Civil Judge, Senior Division, Solan on 22.2.2010 in a guardianship matter to appear in the Court on 27.2.2010 to hand over the custody of master Himanshu in execution petition. The applicant has filed an application under Order 9 Rule 13 CPC for setting aside of ex-parte decree.

4. The applicant on 27.2.2010 came to know that respondent No. 3 had been acquitted by the learned Additional Sessions Judge, Solan. The applicant obtained copy of judgment acquitting respondents No. 3 to 6. The applicant filed the revision alongwith condonation of delay application on 9.9.2010.

5. It has been stated that applicant being uneducated person did not find any Counsel to consult. The aged parents of the deceased suffered severe shock on coming to know the acquittal of respondents No. 3 to 6. The applicant finally consulted somebody in July, 2010 and came to know that the period of limitation is 90 days which has already expired. In June 2010 being the month of holidays, he could not contact anybody. Only in July 2010, he requested his Counsel to file revision in the High Court. On 24.7.2010 applicant applied certified copy of judgment through advocate which was received by the advocate on 29.7.2010 and by the applicant on 7.8.2010. The prayer has been made for condonation of delay in filing the revision.

6. The application has been contested by private respondents by filing reply. It has been stated that application is false to the knowledge of applicant. There is delay of 1640 days. The applicant during trial of the case was supported by private advocate. The revision has been filed by the applicant as counterblast to the petition of respondent No. 3 for custody of child. In the execution petition for executing the order dated 8.4.2008 u/s 25 of the Guardians and Wards Act, 1890, the petitioner was served through dasti process. It has been denied that applicant is illiterate.

7. The petition for custody of master Himanshu was filed by respondent No. 3 in the year 2006 and the same was very much in the knowledge of the applicant. It has been denied that only on 27.2.2010 the applicant came to know the order dated 8.4.2008. It has been denied that applicant first time came to know the acquittal of respondents No. 3 to 6 on 27.2.2010. The applicant was aware of the acquittal of respondents No. 3 to 6 since the year 2006.

8. The respondent No. 5 Ritu is closely related to applicant inasmuch as sister-in-law (husband sister) of Ritu is married to applicant and therefore, it is not believable that applicant was not aware of the acquittal of respondents No. 3 to 6 when they were acquitted on 9.3.2006. The application is full of lies and material facts have been suppressed by the applicant. The prayer has been made for dismissal of the application.

9. The State has not filed appeal against the acquittal of respondents No. 3 to 6. The merits of the case are not relevant for deciding the application for condonation of delay but it has not been contended by the learned Counsel for

the applicant that respondents No. 3 to 6 were not acquitted on merits. The prosecution case is not based upon some suicide note or writing of the deceased nor as per prosecution story prior to date of alleged occurrence there was complaint made by deceased to lawful authority.

10. The applicant in the application has stated that he came to know acquittal of respondents No. 3 to 6 on 27.2.2010 when in execution petition arising out of order dated 8.4.2008 he appeared in the Court at Solan after service of notice of execution on him on 22.2.2010. The applicant in the application has not stated when he was served in the petition filed by respondent No. 3 for custody of master Himanshu u/s 25 of the Guardians and Wards Act, 1890. The applicant is respondent No. 3 in the said petition.

11. The learned Counsel for respondents No. 3 to 6 has shown copy of order dated 8.4.2008 passed by learned Civil Judge, Senior Division, Solan in Case No. 8/2 of 2006 wherein it has been stated that Seema Jaswal had committed suicide on 30.8.2004, respondent No. 3 herein and his family tortured Seema Jaswal and a case under Sections 498-A, 306 IPC was registered against respondent No. 3 and his relatives. It has also been stated in the order dated 8.4.2008 that the respondents therein did not appear to contest the petition and they were proceeded ex-parte.

12. The case was registered against respondents No. 3 to 6 on the statement of applicant. He appeared as PW-7 in the trial. Thus, right from day one the applicant was aware of the criminal case against respondents No. 3 to 6. The sister-in-law of respondent No. 5 is the wife of applicant; therefore, it is not believable that when respondents No. 3 to 6 were acquitted on 9.3.2006 in the criminal case then the applicant did not come to know their acquittal on or about 9.3.2006. On the contrary, it is reasonable to infer that applicant came to know the acquittal of respondents No. 3 to 6 within reasonable time after 9.3.2006.

13. It appears applicant accepted the acquittal of respondents No. 3 to 6 and therefore, he did not take any steps for assailing the judgment dated 9.3.2006 acquitting the respondents No. 3 to 6. The respondent No. 3 filed execution petition against applicant for executing the order dated 8.4.2008 for custody of master Himanshu. The applicant as per order dated 8.4.2008 did not contest the petition and he was proceeded ex-parte. It appears in order to put pressure on respondent No. 3 the applicant thought of filing revision against judgment dated 9.3.2006. According to applicant he was served in execution on 22.2.2010 and he appeared in the Executing Court on 27.2.2010. He applied certified copy of judgment dated 9.3.2006 on 29.7.2010 which was ready on 29.7.2010 but was received on 2.8.2010. The applicant took about 5 months for applying the certified copy of judgment dated 9.3.2006 even if it is assumed he came to know of the acquittal of respondents No. 3 to 6 on 27.2.2010.

14. The applicant has made vague averments that there were holidays in June 2010. There is no specific averment in the application what the applicant had

done after 29.7.2010 or 2.8.2010. The revision was filed in the Registry on 9.9.2010. There is unexplained delay. In *Pundlik Jalam Patil (dead) by LRs. v. Executive Engineer, Jalgaon Medium Project and Another* (2008) 17 SCC 448, it has been held that every body is presumed to know law. The Court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The Court helps those who are vigilant and do not slumber over their rights.

15. The Supreme Court in *Balwant Singh (Dead) Vs. Jagdish Singh and Others*, has held that the law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly. Liberal construction cannot be equated with doing injustice to the other party. The delay in the present case is of 4 years 3 months and 3 days. The application is vague. The applicant has not shown sufficient cause for condonation of delay in filing the revision. On the contrary, there is substance in the defence of the respondents No. 3 to 6 that revision has been filed by the applicant as a counterblast to the custody petition filed by respondent No. 3 against applicant for the custody of master Himanshu son of the deceased Seema and respondent No. 3. The State has not filed appeal against the acquittal of respondents No. 3 to 6. In these circumstances, valuable rights accrued in favour of respondents No. 3 to 6. In addition the applicant remained thoroughly negligent in not filing the revision immediately even after on 27.2.2010 when he allegedly came to know the acquittal of respondents No. 3 to 6. He filed the revision on 9.9.2010, thus seen from any angle no case has been made out for condonation of delay in filing the revision. Resultantly, the application fails and is accordingly dismissed.