

(2014) 06 AP CK 0178

In the Andhra Pradesh High Court

Case No : Crl. A.M.P. No. 195 of 2014 in Crl. A. (SR) No. 4139 of 2014

The State of A.P.

APPELLANT

Vs

Vajjarappu Dhaneswara Rao

RESPONDENT

Date of Decision : 16-06-2014

Acts Referred:

Limitation Act, 1963 — Section 5
Penal Code, 1860 (IPC) — Section 409, 420, 465, 467, 471
Prevention of Corruption Act, 1988 — Section 13(1)(c), 13(2)

Citation : (2015) 2 ALD(Cri) 785

Hon'ble Judges : U. Durga Prasad Rao, J

Bench : Single Bench

Advocate : P. Kesava Rao, Special Standing Counsel, Advocate for the Appellant;
P. Nagendra Reddy, Advocate for the Respondent

Judgement

U. Durga Prasad Rao, J.—In this petition filed under Section 5 of Limitation Act, the petitioner/appellant i.e. State represented by Inspector of Police, C.B.I, Visakhapatnam prays to condone the delay of 800 days in preferring the appeal.

2. The petitioner's case is thus:

"a) The Inspector of Police, CBI, Visakhapatnam filed charge-sheet against respondent/AO for the offences under Sections 420, 467, 471, 477-A of IPC and under Section 13(2) r/w 13(1)(c) of Prevention of Corruption Act, 1988 (for short "P.C. Act") on the allegation that the AO being incharge Branch Manager, S.B.H., Tilak Road Branch, Rajahmundry abused the official position and temporarily misappropriated an amount of Rs. 20,00,000/- by fraudulently and dishonestly passing a cheque for Rs. 20,00,000/- for paying which was issued by one B. Sai Rama Rao, Managing partner of M/s. Sri Krishna Engineering Company and others who was a customer of the branch and also temporarily misappropriated an amount of Rs. 2,00,000/- released by him towards part loan proceeds of housing loan sanctioned by him in the name of G. Sathi Babu, customer of the branch. The trial Court framed charges under Sections 409, 471 r/w 465 and 477-

A of IPC and also under Section 13(1)(c) r/w 13(2) of P.C. Act and conducted trial.

b) Ultimately the trial Court found the accused not guilty of the charges under Sections 409, 471 r/w 465 and 477-A of IPC but held him guilty of the charges under Section 13(1)(c) r/w 13(2) of P.C. Act and convicted and sentenced him accordingly.

c) Hence the appellant filed Crl. A. No. 1036 of 2011 aggrieved by the conviction for the offence under Section 13(1)(c) r/w 13(2) of P.C. Act and same is pending. Whereas, the prosecution filed the instant appeal aggrieved by the acquittal of the accused for the offences under Sections 409, 471 r/w 465 and 477-A of IPC. In filing the said appeal, there was a delay of 800 days and hence, the present petition is filed to condone the delay.

d) The submission of prosecution is that it received certified copy of judgment on 30.08.2011 and thereafter, the Spl. P.P. submitted the comments. His comments and the judgment were placed before the HOB, CBI, Visakhapatnam on 05.09.2011. On 19.09.2011, HOB, CBI, Visakhapatnam given his comments and all of them were sent to Zonal office, Hyderabad. Thereafter, on 17.10.2012, the J.D., CBI, ACZ, at Hyderabad sent his comments to Head Office for preferring an appeal along with the comments of DLA dated 12.10.2012. On 26.10.2012, ALA, CBI, HQ, New Delhi agreed to file the appeal before the Hon"ble Court. On the same day, the DOP, CBI has given comments to file the appeal. On 07.11.2012 a letter was sent to the Ministry for approval to file an appeal. On 10.12.2012, the Ministry has sent the approval to file appeal and the same was received by the Branch on 28.12.2012. Thereafter the files were circulated to the concerned for preferring an appeal in the Hon"ble Court. After preparation of grounds, the same were verified and opinion of the Senior P.P. was also taken. The opinion of the Sr. P.P. along with the grounds was submitted to DIG on 11.10.2013. On 14.10.2013, the file was forwarded through a letter dated 14.10.2013 to the Standing Counsel for filing an appeal. After going through the comments, the opinion, the judgment and the enclosures, the appeal was filed in the Court on 03.12.2013. As such there is a delay of 800 days in filing the appeal in this Hon"ble Court. The said delay is neither intentional nor wanton but only on administrative grounds as stated supra and if the delay is not condoned, the appellant will be put to greater hardship."

Hence the petition.

3. Notice served on the respondent.

4. Heard arguments of Sri P. Kesava Rao, learned Special Standing Counsel for CBI and Sri P. Nagendra Reddy, learned counsel for respondent/AO.

5. Learned counsel for petitioner/appellant submitted that the delay of 800 days was neither willful nor wanton but due to the inevitable procedure to be followed by the CBI for seeking permission from the higher authorities and in that process

delay was occurred and the petitioner has clearly submitted the reasons for the delay and therefore, this Court may be pleased to consider the same. He further submitted that this is a case of severe bank fraud committed by the accused and the trial Court though found him guilty of the charge under Section 13(1)(c) r/w 13(2) of P.C. Act but erroneously held him not guilty for the offences under IPC which are based on the same evidence. So to establish that the trial Court erred in applying the same evidence in respect of the IPC offences, an opportunity may be granted to the petitioner/appellant in the interest of justice.

6. Per contra, learned counsel for respondent/AO while severely opposing the petition submitted that there is no cause much less sufficient cause shown by the petitioner/appellant for the abnormal delay in filing the appeal. Learned counsel argued that in Para 6 of the petition, except mere mentioning how the file moved from one department to another department, no plausible reason or explanation was given as to why at particular department, the file was held up for an abnormal period, ultimately resulting in abnormal delay in filing the appeal. He submitted that unexplained delay at different stages is only due to lack of diligence and responsibility on the part of the concerned and merely because the petitioner happens to be a Government organization, no different standard can be adopted to consider its application, particularly when no iota of explanation worth the name was offered by the petitioner. He relied upon the decision reported in Office of The Chief Post Master General and Others Vs. Living Media India Ltd. and Another, . Learned counsel submitted that if at this belated stage delay were to be condoned, the respondent/AO will be forced to face the second round of litigation. He thus prayed to dismiss the application.

7. In the light of above rival arguments, the point for determination in this petition is:

"Whether the petitioner/appellant could show sufficient cause to condone the delay? "

8. Point: A perusal of the record would show that judgment in C.C. No. 16 of 2008 was passed by the trial Court on 26.08.2011. Certified copy of judgment was prepared on 30.08.2011. As per Article 114 of Limitation Act, the petitioner has to file appeal within three months from the date of securing the certified copy of judgment since there was no delay in applying for certified copy of judgment. Be that it may, the record shows that the appellant preferred the appeal only on 06.02.2014 i.e. with a delay of 787 days. The "reason" for delay if at all we may call it so, was explained in Para 6 of the petition. The chronology of the delay can be analysed thus:

"? C.C. of judgment received on 30.08.2011.

? Comments of Spl. P.P. submitted on 05.09.2011

? Comments of HOB, CBI, Visakhapatnam submitted to Zonal office, Hyderabad on 19.09.2011.

? The Zonal Office, CBI Hyderabad sent comments to Head Office, New Delhi on 17.10.2012.

? The DLA at New Delhi gave his comments on 12.10.2012.

? The ALA gave consent for filing appeal on 26.10.2012.

? The DOP, CBI, New Delhi gave his comments agreeing to file appeal on 26.10.2012.

? Letter sent to Ministry for approval on 07.11.2012.

? Approval sent by the Ministry on 10.12.2012.

? Approval received by the branch on 28.12.2012.

? Appeal prepared and submitted with the opinion of Senior PP to DIG on 11.10.2012.

? File sent to Standing Counsel for filing appeal on 14.10.2013.

? The appeal filed in the High Court on 03.12.2013 (However the stamp of High Court shows that it was filed on 06.02.2014)."

9. Thus above narration would show that except giving the different periods of circulation of file at different departments, no plausible explanation was offered by the petitioner as to why at a particular department, the file was held up for an unduly long period for consideration of this Court. For instance, the file was held up from 19.09.2011 to 17.10.2012 at Zonal Office, Hyderabad and no reason was given for such inordinate delay in non-attending the file. Similarly, the file was received from Ministry with approval on 27.12.2012 but there is no explanation as to why it took more than one year for preferring the appeal even after securing the consent from the concerned Ministry. Without a cause being shown for the delay, it will be difficult for the Court to test the same on the anvil of law to decide its merits. Hence lack of explanation shall only be held as no explanation. In the Postmaster General's case (1 supra) cited by the respondent/AO, the Hon'ble Apex Court while considering the point whether delay of 427 days committed by the postal department in filing SLP was due to sufficient reason or not, has held thus:

"27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a

liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government. "

10. Needless to reiterate that the above observation of Hon"ble Apex Court applies with all its force to the present case on hand. It must be said that there is no explanation worth the name for considering the application in favour of the petitioner/appellant. In these circumstances, this Court is constrained to dismiss the petition.

11. In the result, this petition is dismissed and consequently, the appeal is rejected.