

(2013) 10 BOM CK 0249

In the Bombay High Court

Case No : Criminal Application [Apl] No. 243 of 2013

Vishwanath Sayajirao Wakudkar

APPELLANT

Vs

Smt. Shiladevi Narayan Muneshwar and Another

RESPONDENT

Date of Decision : 21-10-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 1004

Hon'ble Judges : P.D. Kode, J

Bench : Single Bench

Judgement

P.D. Kode, J.—Heard. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2. The applicant-original first informant in Criminal Case No. 167 of 2007 of the Court of Judicial Magistrate, First Class, Umarkhed, for offences under Sections 294, 323, 427 & 506(1) of the Indian Penal Code, prays for exercising powers u/s 482 of the Code of Criminal Procedure, for quashing and setting aside order dated 21.3.2013, dismissing an application for condonation of delay occurred in preferring the appeal u/s 372 of the Code of Criminal Procedure against the judgment and order of acquittal.

3. Considering the nature of controversy involved in the present matter, it is wholly unnecessary to narrate in detail about the subject matter of said case, except stating that, after investigation of the first information report lodged by the applicant regarding an incident occurred on 11.7.2007, Police Station, Umarkhed charge sheeted non-applicant No. 1 for commission of offences narrated hereinabove. After the trial in the said case, non-applicant No. 1 was acquitted from the charge of having committed the said offences.

4. Mr. Kurekar, learned counsel for the applicant, states that since the said report was lodged regarding the acts committed, qua the first informant, he was a victim within the meaning of Section 2(wa) of the Code of Criminal Procedure. It is submitted that having regard to the said fact, the applicant was entitled to

prefer an appeal for assailing the said judgment and order of acquittal passed by the trial court. It is his submission that since no time period of preferring such an appeal by the victim is prescribed either under provisions of the Code of Criminal Procedure or otherwise, he was entitled to present the same. It is submitted that the applicant, by way of abundant caution, preferred an application for condonation of delay, by invoking provisions of Section 5 of the Limitation Act, for condoning delay of 4 months and 16 days occurred in not presenting such appeal within 30 days of the judgment and order intended to be assailed.

5. Mr. Kurekar, learned counsel further contends that since there was no necessity for preferring such an application, in view of no period of limitation being prescribed for preferring such an appeal, the appellate court ought to have dismissed the application preferred as superfluous and taken up the appeal for considering it in accordance with the law. It is contended that the appellate court, in stead of observing such a procedure, after hearing non-applicant No. 1, decided said application, qua the merits of the matter contended therein and dismissed the same. It is urged that, dismissal of the said application, has resulted in automatically not entertaining the appeal. It is the submission of learned counsel for the applicant that since such a course could not have been followed by the appellate court, his appeal has been impliedly got decided as not entertained in derogation of the provisions of law. It is submitted that in view of the legal position pointed out, the order of dismissal of application for condonation of delay, for the reasons recorded, cannot be legally sustained. It is contended, hence the said order be quashed and set aside and appeal preferred by the applicant be ordered to be restored on file and be ordered to be considered in accordance with the law.

6. Mr. Sambre, learned counsel for non-applicant No. 1, contends that the learned counsel for the applicant, having raised such a contention for the first time in this application and having not raised the same before the trial court, has resulted in trial court not recording the findings upon the said aspect. It is submitted that the question of requirements of there being an application for condonation of delay or otherwise, for the reasons contended by the learned counsel for the applicant having not gone into, non-applicant No. 1 requests for relegating the matter back to appellate court for considering the said aspect and deciding the application for condonation of delay, as preferred, and thereafter, the appeal in accordance with the law.

7. After giving thoughtful consideration to the submissions advanced, there appears substance in the submissions canvassed by the learned counsel for the applicant of there being no express provision stipulating any period of limitation within which the victim can exercise the right conferred upon him by the amended provision of Section 372 of the Code of Criminal Procedure. However, there is also substance in the submission canvassed by the learned counsel for the applicant that the said question being not gone by the appellate court in view of the same being not agitated before the said court by the learned counsel for

the applicant, it would be proper to relegate the matter back to the appellate court for deciding the said question and, thereafter, the appeal presented, in accordance with the decision arrived thereon. Needless to add that, both the parties were unable to point out any provision prescribing any specific period of limitation for enforcing the right given to the victim u/s 372 of the Code of Criminal Procedure, as amended by Amending Act, 2009.

8. Having regard to the same, it appears proper- to quash and set aside order impugned in the application and relegate the matter back to the trial court for deciding the application for condonation of delay, as well as the appeal presented, in light of the submissions which are canvassed i.e. (i) whether any application for condonation of delay, as made by the applicant, was necessary, (ii) whether the applicant could invoke the provisions of Section 5 of the Limitation Act for preferring an application and (iii) whether the applicant had a right to present appeal u/s 372 of Code of Criminal Procedure, without preferring an application for condonation of delay.

9. Resultantly, the order impugned in the application is quashed and set aside and the matter is relegated back to the appellate court for deciding the proceeding taken by the applicant before the said court by deciding the question incorporated in the preceding paragraph 6 of the judgment. The trial court shall decide the same, as early as possible and in any event, within a period of six weeks, from the receipt of copy of this order. Rule is made absolute in above terms.