

*** "REPORTABLE"**
HIGH COURT OF DELHI AT NEW DELHI

+ Crl. L.(P). 8/2004

Pronounced on : February 13, 2009

STATE PETITIONER
! Through : Mr. O.P. Saxena, APP.

Versus

\$ HARDAWARI LAL RESPONDENT
^ Through : Mr. Rajesh Mahajan, Advocate.
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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not? Yes
- (3) Whether the judgment should be reported in the Digest ? Yes

ARUNA SURESH, J.

Crl. M.A. No.242/2004 (u/s. 5 of the Limitation Act)

1. Petitioner has sought condonation of delay in filing and refiling the present appeal alleging that the respondent was acquitted vide order dated 2.8.2000 by the learned Metropolitan Magistrate; the Senior P.P. (PFA) prepared the grounds of

acquittal on 13.9.2000 and forwarded the file to Deputy Legal Advisor (PFA) who opined it a fit case for filing the appeal and forwarded the file to the Director (PFA) on 1.2.2001; Director (PFA) forwarded the file to the Secretary (Law and Judicial) for advise through Secretary (Health) on 28.3.2001; Secretary granted permission to file the appeal on 3.5.2001; file was received back by the Standing counsel (Criminal) office on 28.6.2001; the appeal was filed on 31.8.2001; after filing of the appeal certain objections were raised by the Registry of this court; the file was misplaced and it could be traced out only in the last week of June, 2003; the objections were removed and the appeal was filed. There is a delay of 206 days in filing and 1 year 10 months and 72 days in refiling the appeal, which was neither intentional nor deliberate.

2. Mr. Rajesh Mahajan, learned counsel for the respondent has contested this petition contending, inter alia, that the actual delay in initial filing of the appeal is over 294 days and that delay in

refilling is 658 days and not 206 days and 1 year 10 months 72 days respectively as alleged and therefore, since no condonation is sought for the balance period, delay cannot be automatically condoned for the unasked period and therefore, even if the present application seeking condonation of delay is allowed, the appeal shall remain barred by period of limitation and that a valuable right has arisen in favour of the respondent, cannot be allowed to be taken away by the petitioner in the manner prayed and that the petition is liable to be dismissed.

3. Mr. O.P. Saxena, learned APP for the State has submitted that because of procedural delays on behalf of the department, the appeal could not be filed in time and the technicalities of law should not prevent the court from doing substantial justice and undoing illegalities perpetuated in the process. In appeals filed by the State, because of various formalities to be completed, the delay in preparing and filing the appeal is unavoidable and, therefore, the court should adopt liberal approach

in considering this application and condone the delay in filing and refilling of the appeal. He has referred to:-

- (i) ***State of Haryana vs. Chandra Mani & Ors., 1996 (3) SCC 132;***
- (ii) ***Special Tehsildar, Land Acquisition vs. K.V. Ayisumma', 1996 (10) SCC 634;***
- (iii) ***AIR 1987 SC 1353 (name of the case not given);***
- (iv) ***N. Bala Krishnan vs. M. Krishnamurthy, 1998 (7) SCC 123; and***
- (v) ***State vs. Rajbir Singh & Ors., 2002 (2) JCC 972.***

4. Mr. Rajesh Mahajan, learned counsel for the respondent has argued that since the petitioner has not sought condonation of delay for the remaining period, even if, the application is allowed, the appeal would remain barred by period of limitation. He has referred to :-

- (i) ***State vs. Dharamapal 2003 SCC (Crl.) 1012;***
- (ii) ***Calcutta Municipal Corporation vs. Pawan K. Saraf, 1999 (1) FAC 1.***

5. Present criminal appeal has been filed by the State Govt. of NCT of Delhi. Generally where appeal is filed by the State and there is delay in filing the appeal, the court has to consider the delay in a justice oriented manner rather than the technical detection of sufficient cause for explaining every day's delay. Considering the time generally taken by the procedural red tape in the decision making process the government, the court should permit some amount of latitude. The court has to keep in mind that State is an impersonal machinery working through its officers and therefore State cannot be put at the same procedural stringency as individual. If State appeals are dismissed considering the sufficient cause in a technical manner, the public interest would suffer. The proper approach of the court in such like circumstances is to decide the matter on merits unless it is of the view that the case is hopelessly without any merit.
6. In this case, 90 days period for filing the appeal under Section 378 Code of Criminal Procedure

(Cr.P.C.) expired on 9.11.2000 after excluding the time which was taken by the State for obtaining the certified copy of the order. The appeal was filed on 31.8.2001. On calculation the total delay was of 294 days in filing the appeal and not 206 days as alleged. Calculation for the period of total delay in refilling also seem to be incorrect. Since there was mistake in the calculation of period for delay, in the application petitioner sought condonation of delay for period of 206 days only in initial filing of the appeal and 1 year 10 months 72 days in refilling the appeal. This mistake in calculation seems to be bonafide. While calculating the delay in filing the appeal, the period of limitation for filing the appeal instead being taken as '90 days' was taken as '180 days'. This resulted into a fallacy in the calculation of the period of delay in filing the appeal. Under these circumstances, the court should not adopt a view to hold that since petitioner has not sought condonation of delay for the period of 88 days the application deserved rejection, would not be

appropriate and just in the facts and circumstances of this case. Therefore, without going into the intercities and technicalities of law, it is just and proper in the present case that the delay in filing the appeal and refilling of the appeal are condoned.

7. Hence, application is allowed, the delay in filing and refilling of the appeal is hereby condoned.

Crl. L.(P). 8/2004

1. On 13.04.1994 at about 5.45 P.M. Food Inspector Satish Kumar Gupta purchased a sample of kanche wali bottle of aerated water for analysis from accused Kalyan Ji (already acquitted) at his shop at Sadar Bazar. The sample consisted of 9 originally sealed bottles having identical label declaration. The Food Inspector divided the sample bottles in three equal parts consisting of three bottles each in the same condition. He prepared necessary documents at the spot. Second counter part of the sample was sent to Public Analyst for analysis if the sample was adulterated. The Public Analyst found

the sample not conforming to standards because total plate counts were found 126 colonies per ml. which was in excess of maximum prescribed limit of 50 colonies and also coliform count as 10900 colonies per 100 ml. which should have been totally absent in 100 ml. A complaint was accordingly filed by the petitioner under Section 16 (1) (1-A) of Prevention of Food Adulteration Act (hereinafter referred to as 'PFA Act').

2. This complaint was filed against Kalyan Ji from whose shop the samples were purchased, Shri Deepak Kumar Manek, another purchaser of kanche wali bottle/product and Hardwari Lal Chaurasia. Hardwari lal Chaurasia happened to be the owner and manufacturer of Chaurasia Soda Water factory, Sadar Bazar and was incharge and responsible for day to day conduct of the business of the firm.
3. During the trial of the case Kalyan Ji and Deepak Kumar Manek moved an application seeking their discharge claiming protection under right of

warranty. Since respondent Hardwari Lal Chaurasia conceded to the relief claimed by Kalyan Ji and Deepak, they were acquitted vide order dated 2.2.1999.

4. Respondent had exercised his right under Section 13 (2) of PFA Act and accordingly second counter part of the same sample was sent to Director CFL, Mysore for further analysis. This sample was also found adulterated but on different findings. The Director CFL found total plate counts and coliform count within the prescribed standards i.e. total plate counts per ml as '21' and coliform count per 100 ml 'NIL'. However, the Director CFL found the sample adulterated because he noticed that benzoic acid present 172.5 ppm which was in excess of the limit of 120 ppm and yeast and mould count per ml as '262' which exceed the limit of '2' per ml as per PFA Act.
5. The trial court acquitted respondent Hardwari Lal Chaurasia as it was of the opinion that Food Inspector did not comply with the requirements as

per Rule 22 of the PFA Rules as 600 ml of aerated water was required to be sent to Public Analyst for analysis after mixing up the contents of all the samples and then refilling the bottles, dividing them in three parts so as to give three uniform and representative samples for analysis purposes.

6. The trial court observed as under:-

“11. Thus considering the aforesaid, I am of the opinion that sample was not taken in proper manner and Food Inspector should have instead mixed up the contents of the 9 bottles and then said mixed up quantity should have been divided in 3 equal parts and only that method could have given the representative sample. I subscribe to the view taken by Hon’ble Punjab and Haryana High Court in aforesaid judgment and there is no merit in the contentions raised by prosecution that as per Rule 22 (A), there was no necessity of mixing up the contents. Rule 22 (A) comes into picture only when food is sold in sealed container having identical label declaration.

12. Here in the case in hand, such type of kanchewali bottles cannot be said to be sealed containers. Hon’ble Madras High Court in case of State of Mutthu Krishnan 1990 (2) FAC Page 196 had explained the term ‘sealed container’. Relying upon one judgment of State of Kerala vs. K.S.

Balakrishnan 1972 FAC 617 Madras High Court observed that "closed container" are not synonymous with "sealed containers". It was further observed that in the Stroud's Judicial Dictionary 3rd Edition, the meaning given to the word "sealed" is "secure with any substance without destruction of which the cork, plug or stopper cannot be withdrawn". In the Shorter Oxford English Dictionary, it has been defined as a container which is so closed that access to its contents is impossible without breaking the fastening.

13. View from this angle kanchewali bottles in question cannot be said to be sealed container and therefore, prosecution cannot take any advantage of Rule 22 (A) of PFA Rules.

14. Moreover, in the present case, as already discussed, when Public Analyst had examined the first counter part, he had found total plates as 126 colonies per ML whereas Director, CFL had found the same as 21 colonies per ML. Similarly, coliform count were found as 10900 colonies per 100 ML by Public Analyst whereas Director did not find any coliform count in the sample and reason is not far to seek. It was precisely due to improper sampling. Admittedly, as per scheme of the PFA Act certificate issued by Director CFL supersedes the previous report of Public Analyst and it is not permissible and proper to compare two results but considering the manner in which the sample was taken and considering the totally

contradictory reports, I am compelled to look into both the results. Here I would like to draw support from one judgement of our own High Court cited as MCD vs. Lal Ram 1980 (2) FAC 147 wherein it was held that in case where the 2 reports of Director and Public Analyst appear to be absolutely divergent and different from each other then the report of Public Analyst can be looked into.

15. In view of my aforesaid discussion I find it fit case where accused should be given benefit of doubt and accused Hardawari Lal Chorasias is acquitted of all charges levelled against him."

7. While reaching to the aforesaid conclusion, the trial court took into consideration the proposition of law as laid down in '***Hans Raj vs. State of Punjab 1995 (1) FAC 102***'; '***Bhagwandass vs. State 1981 (II) FAC 351***'; '***State by PP vs. Muthukrishnan, 1990 (2) FAC 196***'; '***State of Kerala vs. K.S. Balakrishnan, 1972 FAC 617***'; and '***MCD vs. Lala Ram & Anr. 1980 (II) FAC 147***'.

8. Learned counsel for the respondent has also referred to:-

- (i) State vs. Dharampal 2003 SCC (Crl.) 1012;**
- (ii) Calcutta Municipal Corporation vs. Pawan K. Saraf 1999 (1) FAC 1;**
- (iii) State of Punjab vs. Daulat Ram, 1992 (I) FAC 58;**
- (iv) Anil Kumar vs. Food Inspector, Jind, 1982 (I) FAC 9; and**
- (v) Vinod Kumar vs. State of Punjab, 1980 (II) FAC 378.**

9. The trial court has correctly interpreted and applied the provisions contained in Rule 22 and 22 (A) of PFA Rules to the facts and circumstances of this case. The court rightly took into consideration the divergent and substantial difference in the report of the Public Analyst and Director, CFL.

10. Since the contents of the samples were not mixed up and then refilled in the bottles and should have been divided in three equal parts and this being the only method when followed could have given the correct representative sample, the court justly observed that there was violation of the rules by the Food Inspector while separating the samples and grouping and dividing the bottles in three equal parts and this resulted into divergent opinion given by the Public Analyst and Director CFL on

analysis.

11. The case of the State is weak on merits. Hence, under the circumstances of the case criminal leave petition is hereby dismissed.

Trial court record be sent back with the attested copy of the order through special messenger.

(ARUNA SURESH)
JUDGE

February 13, 2009
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