

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 16.12.2014

+ CRL.REV.P. 317/2014

PRAVEEN BHUTANI Petitioner
Through: Mr.Chetan Sharma, Senior Advocate
with Mr.Rajiv Vig, Advocate
versus

SMT USHA SETHI & ANR. Respondents
Through: Mr.S.K.Rungta, Senior Advocate with
Mr.Shivam Batra Advocate for R-1.
Mr.Sunil Sharma, APP for State/R-2
S.I. Ishwar Singh, P.S. Hazrat
Nizamuddin.

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. This is a petition under Section 397 r/w Section 401 of the Code of Criminal Procedure, 1973 filed by the petitioner challenging the legality and propriety of the impugned order dated 15th March, 2014 passed by learned Additional Sessions Judge-01, South-East District, Saket Courts, New Delhi whereby the learned Additional Sessions Judge allowed the application of respondent No.1 for condonation of delay in filing the Appeal No.11/2013 under Section 372 Cr.P.C.
2. It is the submission of learned senior counsel for the petitioner

that a number of civil litigations are pending between the parties. Respondent No. 1 in collusion with her husband on the basis of some false and frivolous complaint got the criminal proceedings initiated in 1995. The charge sheet was filed by the police on 15th March, 1997 and since then, the proceedings had been adjourned on one or other ground. On 5th March, 2013 summons were ordered to be issued to the complainant/respondent No.1 and other witnesses for 1st April, 2013, however, the address was wrongly mentioned as 18, Sunder Vihar instead of Sunder Nagar and, therefore, summons could not be served upon respondent No.1 and other witnesses. Thereafter fresh summons were issued to respondent No.1 and other witnesses through SHO/DCP concerned for 7th May, 2013 which were duly served. Despite that neither the complainant nor any witness appeared. As such, the prosecution evidence was closed. Learned Metropolitan Magistrate, thereafter acquitted the petitioner.

3. Respondent No.1 filed an appeal in August, 2013 challenging the order dated 7th May, 2013. Along with the appeal, an application under Section 5 of Limitation Act was also filed for condonation of delay of 40 days in filing the appeal. In this application, respondent No. 1 knowingly cooked up a false story by alleging that the address

mentioned in the summon was incorrect, she and her husband were never made aware of the pendency of the proceedings against the accused; the accused and the complainant are engaged in civil litigation and in one of those proceedings, the complainant wanted to find out the status of the FIR and on queries came to know of passing of impugned order acquitting the petitioner. On the basis of false statement, the application was allowed by the learned Additional Sessions Judge which order is erroneous and, as such, the same is liable to be set aside. It was further submitted that the respondent had engaged a lawyer and was well versed with the proceedings of the case yet a false plea was taken of not being aware about the passing of the order. As such, on the basis of false facts, respondent No.1 succeeded in getting a favourable order which is liable to be set aside. It was further submitted that the main challenge to the maintainability of the present Revision Petition raised by the respondent is that the same is an interlocutory order and, therefore, revision is not maintainable. By placing reliance on *Amarnath & Ors. v. State of Haryana & Ors.*, AIR 1977 SC 2185, it was submitted that the impugned order is not an interlocutory order and, therefore, jurisdiction of the Court is not barred in entertaining the revision

petition.

4. Rebutting the submission of learned senior counsel for the petitioner, it was submitted by the learned senior counsel for the respondent that the revision petition is not maintainable having been preferred against an interlocutory order. Reliance was placed on *Madhu Limaye v. The State of Maharashtra*, (1977) 4 SCC551 and *State represented by Inspector of Police and Ors. v. NMT Joy Immaculate*, (2004) 5 SCC 729. It was further submitted that while condoning the delay in filing the appeal, the learned ASJ has not touched the merits of the case and, therefore, ample opportunity is available to the petitioner to persuade the learned ASJ for returning a finding in his favour.

5. It was further submitted that FIR was registered in the year 1995, the charge sheet was submitted in 1997, the charge was framed only in the year 1999. Challenge was made to the order of framing charge which, however, did not succeed and the matter was remanded for framing fresh charges in the year 2005. Since 2005 till 2013, fresh charges were not framed and the matter remained pending for securing presence of the accused persons. For the first time, Court issued notice to respondent No.1 and witnesses for appearance on 1st April,

2013. However, the respondent and the witnesses were not served. As such, the matter was adjourned for 7th May, 2013. The complainant and the witnesses could not appear due to non-service of summons and, as such, while closing the prosecution evidence, the impugned judgment was passed acquitting the accused persons of the offences alleged against them. It was further submitted that there is no false averment made in the application, inasmuch as, various litigations are pending between the parties and in one of such litigations, the respondent gave list of dates and events wherein reference was also made to the registration of FIR against the petitioner. Although it is true that an advocate was appointed by the complainant in the said case but that was as far back as 3rd July, 1999. Fourteen years have passed since then. Mere pendency of FIR does not mean that the complainant was aware about day-to-day proceedings. Reference was made to the order sheet dated 5th March, 2013 for showing that one of the accused Kulbhushan Sethi was absent and the proceedings were going on for securing his presence by issuing process under Section 82 Cr.P.C. On that date, for the first time, notice was ordered to be issued to PWs at Sl. No. 1 & 2, returnable on 1st April, 2013. On 1st April, 2013, it was ordered that

since as per the report of SHO, Kulbhushan Sethi had shifted to Canada with which India has no Extradition Treaty, hence proceedings against him were adjourned *sine die* till he was traced. However, the witnesses at Sl. No.1 & 2 could not be served. As such, fresh summons were ordered to be issued through SHO/DCP concerned for 7th May, 2013 on which date the prosecution evidence was closed and the accused were acquitted. It was further submitted that at no point of time, the summons were served upon the complainant or the witnesses, inasmuch as, when the summons were sent to the witnesses, the same were issued at an incorrect address, i.e., House No. 18, Sunder Vihar, New Delhi whereas complainant and her family always lived at House No.18, Sunder Nagar, New Delhi. Thereafter when the summons were sent for appearance on 7th May, 2013, at that time Dhirendra Bahadur Yadav, guard, met the process server and informed that one of the witnesses, namely, Poonam Sethi has already died. He also informed that the owner had gone out of Delhi and when he would come back only then he would be able to give the death certificate. As regards witnesses Usha Sethi & Manmohan Sethi, the guard Dhirendra Bahadur Yadav informed that she had gone out of station along with her husband for treatment. Therefore, at no point of

time the complainant or the witnesses were served. By referring to explanation appended to Section 64 of the Code of Criminal Procedure, it was submitted that the service on guard is not a service on the complainant or the witnesses. Moreover, there is no report that the process server left the summons with guard so that he could give the summons to the witnesses after their return. Under the circumstances, the submission that delay was condoned on the basis of false pleas is devoid of merit. Moreover, while condoning the delay, the Court has not even touched the merits of the appeal and, therefore, same are not required to be gone into even by this Court. The order has simply permitted the parties to urge their respective submissions on merits and has decided nothing.

6. It was further urged that no period of limitation has been prescribed for an appeal filed on behalf of victim under Section 372 of the code. By placing reliance on *Kareemul Hajaji v. State of NCT of Delhi & Ors.*, CrI.M.A.No.13541/2010 in CrI.Appeal No.940/2010, it was submitted that Division Bench of this Court observed that in the absence of any period of limitation prescribed in the Code of Criminal Procedure or the Limitation Act, the appeal by a victim should be filed within a reasonable period of 60 days. Complainant and her husband

are aged about 80 years. There is a delay of only 40 days. In view of the report of the process server that the complainant was out of station, what else was required on the part of the complainant to show that she was not aware of the proceedings and immediately when she came to know about passing of the impugned judgment, steps were taken and the appeal was filed. Under the circumstances, it was submitted that firstly the revision is not maintainable having been passed against an interlocutory order even otherwise the impugned order does not suffer from any infirmity which calls for interference. As such, the revision petition is liable to be dismissed.

7. The core question for consideration in the present revision petition is whether the revision petition challenging the impugned order passed by the learned ASJ allowing the application moved by respondent No.1 for condonation of delay in filing the appeal is maintainable or not and the answer to this question would depend upon whether the impugned order is an interlocutory order or not. Sub Section 2 of Section 397 of the Code provides that powers of revision conferred by Sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding. The main question which falls for determination in this

appeal is as to what is the connotation of the term "interlocutory order" as appearing in Sub-section (2) of Section 397 which bars any revision of such an order by the High Court.

8. The expression "interlocutory order" has not been defined in the Code. It will, therefore, be useful to refer to its meaning as given in some of the dictionaries:

"The New Lexicon Webster's Dictionary

"Pronounced and arising during legal procedure, not final."

Webster's Third New International Dictionary

"not final or definitive: made or done during the progress of an action"

Wharton's Law Lexicon

"An interlocutory order or judgment is one made or given during the progress of action, but which does not finally dispose of the rights of the parties e.g. an order appointing a receiver or granting an injunction, and a motion for such an order is termed an interlocutory motion."

Black's Law Dictionary

"Provisional; interim; temporary; not final. Something intervening between the commencement and the end of a suit which decides some point or matter, but is not a final decision of the whole controversy."

9. Ordinarily and generally, the expression 'interlocutory order' has been understood and taken to mean as a converse of the term 'final order'. In volume 26 of *Halsbury's Laws of England* (Fourth Edition) it has been stated as under in para 504:

"[A] judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as to part. It is impossible to lay down principles about what is final and what is interlocutory. It is

better to look at the nature of the application and not at the nature of the order eventually made. In general, orders in the nature of summary judgment where there has been no trial of the issues are interlocutory."

9.1 In para 505 it is said that in general a judgment or order which determines the principal matter in question is termed "final".

9.2 In para 506 it is stated as under:

"An order which does not deal with the final rights of the parties, but either (1) is made before judgment and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declarations of right already given in the final judgment are to be worked out is termed "interlocutory". An interlocutory order, even though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals."

10. In ***Amarnath*** (supra), the Apex Court held that:-

"The term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the rights of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court."

11. In *S.Kuppuswami Rao v. R* AIR 1949 FC 1, the following principle laid down in *Salaman v Warner*, (1891) 1 QB 734 was quoted with approval:

"If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purpose of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory".

12. However, in *Madhu Limaye v. State of Maharashtra*, 1978 Cri. LJ 165, such an interpretation and the universal application of the principle that what is not a final order must be an interlocutory order was not accepted as this will render the revisional power conferred by Section 397(1) nugatory. After taking into consideration the scheme of the Code of Criminal Procedure and the object of conferring a power of revision on the Court of Sessions and the High Court, it was observed as follows:

"In such a situation, it appears to us that the real intention of the Legislature was not to equate the expression "interlocutory order" as invariably be converse of the words 'final order'. There may be an order passed during the course of a proceeding which may not be final in the sense noticed in Kuppuswami's case AIR 1949 FC 1 (supra) but, yet it may not be an interlocutory order - pure or simple. Some kinds of order may fall in between the two. By a rule of harmonious construction, we think that the bar in Sub-section (2) of Section 397 is not meant to be attracted to such kinds of intermediate order."

13. This being the legal position, the impugned order passed by the

learned ASJ allowing the application filed by respondent No.1 for condonation of delay is only an interlocutory order as it does not decide or touch the important rights or liabilities of the parties. Whether the complainant or the witnesses were prevented by sufficient cause from appearing in the Court when the summons were issued to them, is still required to be considered by the learned ASJ. Therefore, mere allowing the application does not substantially affect the rights of the petitioner. That being so, the order being interlocutory order, revision does not lie under Section 397 (2) of the Code.

14. Even otherwise, the appeal was filed by the complainant under Section 372 of the Code of Criminal Procedure. Learned counsel for the respondent relied upon ***Kareemul Hajazi*** (supra) wherein also the question for consideration was whether the appeal filed by the victim was within time or not and a detailed discussion was made by noting as under:-

“8....The following proviso was added to Section 372 of the Code:

“Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”

The proviso to Section 372 was introduced with effect from 31.12.2009 by virtue of the Code of Criminal Procedure (Amendment) Act, 2008. Because

of this proviso, a victim has been given a specific right of appeal against any order passed by a court under three different situations. The first being where the accused is acquitted; the second, where the accused is convicted for a lesser offence and, the third, where inadequate compensation is imposed.

9. Prior to the introduction of the said proviso to Section 372 of the Code, the victim as such did not have any statutory right of appeal. Section 374 of the Code had provided for a convict's right of appeal against conviction. Section 377 enabled the State Governments or the Central Government to file an appeal with regard to inadequacy of sentence. This appeal provision was, however, conditional upon the fact that there could be no enhancement without an opportunity to the accused and that in case such an appeal was preferred, the accused had a right to plead for acquittal and/or for reduction in sentence in that very appeal. Apart from this, under Section 378, two streams of appeals against acquittals were provided. The first stream was of appeals against acquittals by the State Government/Central Government and the same would fall under Sub-sections (1) and (2) of Section 378. This provision is equivalent to Sub-sections (1) and (2) of Section 417 of the Criminal Procedure Code, 1898 (hereinafter referred to as 'the old Code'). However, before such an appeal is entertained, leave of the High Court has to be taken by virtue of the provisions of Sections 378(3). The other stream is in the case of complaint cases wherein, by virtue of Section 378(4), the complainant has to seek special leave to appeal from the High Court. The further requirement is that by virtue of Section 378(5), the application for grant of special leave to appeal must be filed, if the complainant is a public servant, within six months from the date of order of acquittal and in all other cases, within 60 days from the date of order of acquittal. The provision of appeal by a complainant under Section 378(4) is equivalent to Section 417(3) of the old Code for which, by virtue of Article 114(b) of the Limitation Act, 1963, a further period of 30 days was stipulated for filing the appeal after the special leave was granted by the High Court. We may also point out that in case the special leave application filed by the complainant is rejected, then this also precludes the State Government/Central Government from filing an appeal against acquittal under Section 378(1) and (2). This is clearly stipulated in Section 378(6) of the Code which is equivalent to Section 417(5) of the old Code.

10. The period of limitation for filing the appeal under Section 378 (1) and (2) of the Code is 90 days from the date of the order appealed from. This is provided in Article 114(a) of the Limitation Act, 1963, which is with reference to Section 417(1) and (2) of the old Code, but would equally

apply to Section 378 (1) and (2) as was held by the Supreme Court in the case of **State (Delhi Administration) v. Dharampal**, 2001 (10) SCC 372, where the Supreme Court observed as under:

"...Appeals by the State Government or the Central Government continue to be governed by Article 114 (a) of the Limitation Act. In other words, those appeals must be filed within 90 days from the date of the order appealed from. Needless to state if there is a delay in filing an appeal by the State Government or Central Government it would be open to them to file an application under Section 5 of the Limitation Act for condonation of such delay. That period can be extended if the court is satisfied that there was sufficient cause for not preferring the appeal within the period of 90 days.

11. From the above discussion, it is clear that appeals have been provided for under Sections 374, 377 and 378 of the Code in respect of appeals against conviction, inadequacy of sentence and acquittals, respectively. Now, with the introduction of the proviso to Section 372, a victim has also been given the right of appeal in respect of an order of acquittal, a conviction for a lesser offence and for inadequacy of compensation. However, while specific periods of limitation have been prescribed for the earlier three kinds of appeals either in the Code itself or by virtue of the Limitation Act, 1963, there is no period of limitation prescribed for the filing of an appeal by a victim under the proviso to Section 372. Therefore, as is well-established, a reasonable period would have to be inferred from the statutory provisions. [See: **State of Punjab and Ors. v. Bhatinda District Coop. Milk P. Union Ltd.**, 2007(11) SCC 363 para 17: "It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors" and **Government of India v. Citedal Fine Pharmaceuticals, Madras and Ors.**, 1989 (3) SCC 483 para 6: "In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period would depend upon the facts of each case."]

12. In the present case, we tend to agree with the submissions made by the learned Counsel for the Respondents 2 to 4 that the reasonable period of limitation for filing of an appeal by a victim ought to be regarded as 60 days from the date of order appealed from. We say this because under Section 374 read with Article 115(b)(i) of the Limitation Act, the convict's right of appeal to the High Court bears a limitation period of 60 days.

Similarly, even the State's appeal with regard to inadequacy of sentence under Section 377 read with Article 115(b) of the Limitation Act in respect of an appeal to the High Court is required to be filed within 60 days. Furthermore, the application seeking special leave to appeal by the complainant under Section 378(4) read with Section 378(5) has to be filed within 60 days in all cases where the complainant is not a public servant. Of course, the period of limitation where the complainant is a public servant is much longer, i.e., six months. Furthermore, the limitation for an appeal by the State Government or by the Central Government under Section 378 (1) and (2) is 90 days as pointed out above. It is clearly discernible from the above that the period of limitation, which has been prescribed for public servants and/or the State Government and the Central Government is greater than the period of limitation, which has been prescribed in respect of convicts and complainants. Therefore, since the victim is in a similar position to that of a complainant and is a private individual, a lesser period of limitation than that provided to the State Government/Central Government ought to be considered as reasonable. It is in this background that we accept the views of the learned Counsel for the Respondents 2 to 4 that the reasonable period of limitation for a victim's appeal should be 60 days from the date of the order appealed from."

15. The limitation period as noted above, is sixty (60) days. This period of limitation for filing an appeal by a victim ought to be counted from the date when such victim acquires knowledge of the order appealable under proviso to Section 372. This is precisely for the reason that in most of the State cases, the 'victim' has no participatory role at the trial stage and the possibility of his/her remaining in the dark about the adverse order cannot be lightly brushed aside. The above rule of limitation, therefore, cannot be mechanically enforced even if the victim had no informed knowledge regarding culmination of the trial proceedings as it might cause serious prejudice to his/her

rights, close to the extent of snatching away the right to appeal earned by the victims after a long drawn battle. [vide *M/s. Tata Steel Ltd. v. M/s. Atma Tube Products Ltd. & Ors.*, 2013 (3) Crime 613].

16. It is the case of the respondent that she was never served with the summons and she got the knowledge of the acquittal only in July, 2013 and immediately thereafter she applied for certified copies which were delivered only on 6th August, 2013. Thereafter the appeal was filed. Resultantly a delay of 40 days occurred in filing the appeal. It was condoned by the learned Additional Sessions Judge in view of the averments made in the application and the grounds of appeal. Same does not suffer from any infirmity so as to call for interference.

17. Keeping in view the fact that the submissions made by the respondent which prevented her and the witnesses from appearing as a witness which resulted in acquittal of the appellant, is still required to be gone into by the learned Additional Sessions Judge as only delay in filing the appeal has been condoned without touching upon the merits of the case as such, I refrain myself from giving any observation regarding the fact whether the summons were sent at the correct address or not or what is the effect of report given by the guard of the complainant and whether that would tantamount to service of

summons upon the complainant and the witnesses lest it may prejudice the case of either parties on merits.

18. Suffice it to say, the revision itself is not maintainable having been preferred against an interlocutory order. Even otherwise there is no infirmity in the impugned order. As such, the revision petition is dismissed. Interim order dated 24th September, 2014 and continued thereafter stands vacated.

(SUNITA GUPTA)
JUDGE

DECEMBER 16, 2014

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