

Court No. - 42

Case :- GOVERNMENT APPEAL DEFECTIVE No. - 352 of 2023

Appellant :- State of U.P.

Respondent :- Shaikh Mujaarul Islam S/O Mokkal Husain

Counsel for Appellant :- Ashutosh Kumar Sand

Counsel for Respondent :- Neha Rani, Abhishek Ranjan Yadav

Hon'ble Surya Prakash Kesarwani, J.

Hon'ble Ms. Nand Prabha Shukla, J.

1. Heard Sri K.P. Pathak, learned A.G.A. for the State appellant in this government appeal.

2. This appeal has been filed beyond limitation by 550 days along with a delay condonation application and affidavit.

3. In paragraph nos.3 to 11 of the affidavit accompanying the delay condonation application, the appellant has stated as under:-

"3. That the impugned judgment and order of acquittal of the accused respondents was passed on 01.11.2021, the certified copy of the same was applied on 07.12.2021, the information regarding preparation of the same was received on 20.12.2021 and the same was obtained on 22.12.2021.

4. That thereafter the District Government Counsel has prepared the proposal for filing the Government Appeal and sent the same to the District Magistrate on 25.01.2022.

5. That thereafter the District Magistrate after going through the records has accorded his approval for filing the Government Appeal and sent the same to the Law Department, Government of U.P., Lucknow on 17.01.2022.

6. That thereafter, a Government Order dated 10.02.2022 was issued for filing of the Government Appeal, mentioning therein that the limitation for filing of the Government Appeal is upto 11.02.2022.

7. That thereafter the file was obtained in the office of the Government Advocate, High Court, Allahabad on 18.02.2023 after expiry of limitation.

8. That in the file, the certified copy of impugned judgment and order of acquittal was not available and accordingly a communication was sent to the District Magistrate for sending an officer not below the rank of a Gazetted Officer, along with certified copy of impugned judgment and order of acquittal and for filing an affidavit in support of the delay condonation

application.

9. That thereafter several reminder were also sent to the District Magistrate concerned.

10. That thereafter the deponent has contacted the office of the Government Advocate, High Court, Allahabad along with the certified copy of the judgment and order of acquittal, which was applied for on 3.6.2023 and obtained on 26.06.2023 and thereafter the Government Appeal was prepared and filed without any further delay.

11. That under the aforesaid circumstances some delay has occurred in filing of the Government Appeal, which is genuine, bona fide and unintentional."

4. Perusal of the affidavit accompanying the delay condonation application clearly shows that certified copy of the impugned judgment and order dated 01.11.2021 passed in Sessions Trial No.178 of 2018 (State of Uttar Pradesh Vs. Shaikh Mularul Islam) relating to Case Crime No.384 of 2017, under Section 306 I.P.C., Police Station Etmadpur, District Agra, by Additional Sessions Judge/ F.T.C.-First, Agra, was applied by the appellant on 07.12.2021 and the same was received by the appellants on 22.12.2021. Recommendation for filing the Government Appeal was given by the District Magistrate and it was sent to the Law Department Government of U.P., Lucknow on 17.01.2022 for permission. The Government granted the permission on 10.02.2022 for filing the appeal. The file was received in the office of Government Advocate on 18.02.2023. Thereafter, the appellant remained silent and did not turn up to file the appeal. It appears that on 03.06.2023, the deponent of the affidavit contacted the office of the Government Advocate for preparation of appeal and affidavit. The appeal was drafted and was ready on 26.06.2023 and yet it has been filed on 01.08.2023. Thus, as per affidavit, no acceptable explanation has been offered for delay between 10.02.2022 to 18.02.2023 and thereafter from 18.02.2023 to 03.06.2023 and thereafter from 26.06.2023 to 01.08.2023. Thus, the delay of 550 days cannot be condoned in the absence of any explanation for the period aforementioned. Therefore, the delay condonation application deserves to be rejected.

5. That apart, on perusal of the impugned judgment and order passed by the learned trial court, we find that the accused respondents Shaikh Mularul Islam married with the deceased Savera Parveen @ Saniya. It was a love marriage. The deceased committed suicide on 20.08.2017. Application dated 20.08.2017 for lodging F.I.R. was presented by the first informant in the concerned police station on 21.08.2017 and accordingly it was

registered at 8.45 p.m. on the same day. Cause for committing suicide has been shown, to be non-fulfillment of dowry demand and harassment of the deceased by the accused respondents. However, in his cross examination, the P.W.1 and P.W. 3, both admitted that the accused respondents have never beaten or harassed the deceased nor he has demanded dowry. No evidence could be led by the prosecution to establish abetment for commission of suicide by the deceased. Once, the basic ingredients of Section 306 I.P.C. has not been established by the prosecution coupled with the fact that the basic allegation of demand of dowry and harassment could not be proved and instead it was admitted by the prosecution witness that there was no demand of dowry or harassment by the accused respondents, therefore, learned trial court has not committed any manifest error of law or fact to acquit the accused opposite parties. Thus, this government appeal has no merit at all.

6. For all reasons afore-stated, the delay condonation application is rejected. Consequently, the application for leave to appeal and the appeal itself stand dismissed.

Order Date :- 18.10.2023

Atul