

Court No. - 50

Case :- CRIMINAL REVISION No. - 5311 of 2022

Revisionist :- Ambuj Vijay

Opposite Party :- State Of U.P. And 2 Others

Counsel for Revisionist :- Yogendra Pal Singh

Counsel for Opposite Party :- G.A.

Hon'ble Ram Manohar Narayan Mishra,J.

Instant Criminal Revision has been preferred by the revisionist against the judgment and order dated 19.09.2022 passed by learned Additional District and Session Judge/Special Judge, EC Act, Meerut, whereby delay condonation application filed alongwith Criminal Appeal against the judgment of acquittal has been rejected.

Notice issued to respondent No.2, the accused in Criminal Case No. 4801957/2010/2236/2013 are reportedly served notice issued by this Court.

Heard learned counsel for the revisionist as well as learned A.G.A. for the State and perused the record.

The factual matrix of the case in brief are that informant Dr. Aditya Bihari Lal, President and Manager of Krishnarpar Fund Trust lodged a First Information Report on the basis of written report dated 24.01.2010 against Ashad and Amjad Ali, sons of late Alley Ali with the allegation that accused Ashad was tenant in the property of the trust consisting of two shops on ground floor and residential house. He got a power attorney executed in the name of late Sri Shyam Bihari Lal and sold the property to the third person in collusion with his brother Amjad Ali and some other person. He has also executed an agreement to sell in favour of Sardar Jasvinder Singh on 16.11.2005. Sri Shyam Bihari Lal died on 08.06.1973.

The learned trial court on conclusion of trial arising out of Case Crime No. 40 of 2010, under Section 420, 467, 468, and 472 of I.P.C. Police Station Railway Road, District Meerut acquitted both the accused persons from said charges vide judgement dated 11.07.2019. However, the informant Aditya Bihari Lal died on 22.06.2019 and the revisionist filed his death certificate alongwith

present revision. After death of Sri Aditya Bihari Lal, one Ambuj Vijay, who is said to be appointed as Chairman/Manager of said trust filed Criminal Appeal against impugned judgment and order passed by learned Additional District and Session Judge/Special Judge, EC Act, Meerut against acquittal of accused persons. An application for condonation of delay under Section 5 of Limitation Act dated 19.01.2020 was also filed alongwith affidavit, as the appeal was delayed one.

The appellant stated before the Court of Sessions Judge that Sri Aditya Bihari Lal, original appellant was prosecuting the criminal case however died on 22.06.2017, due to death of Sri Aditya Bihari Lal the Manager/ Officer members of the trust could not be apprised of judgment of trial court and the appellant Ambuj Vijay was himself apprised of the judgment dated 11.07.2019 on 22.12.2019 from other tenants of trust property he applied for certified copy of the said judgment and order and he came to know that no appeal has been preferred by the State against the said judgment of acquittal. He got the appeal prepared by counsel and without any further delay he has filed the present appeal. However, learned court below dismissed the application under Section 5 of Limitation Act vide impugned judgment dated 19.09.2022 on the ground that appellant failed to disclose any cogent and justifiable reason for delay in filing appeal against the judgment of acquittal.

Learned court below also observed that appellant is not covered within definition of "aggrieved person" under proviso to section 372 Cr.P.C.. The application has been filed in ignorance of proper parties and procedure. The applicant failed to satisfy the Court as to by which order the applicant was authorized to prosecute the pending cases as well as the cases likely to be instituted by or against the trust. It is also not clarified that for which post, the revisionist holds in the trust, whereas in the application it is stated that present Manager is Sri Ajay Garg. He has also not filed any authorization in his favour by the trust to prosecute/prefer present appeal by which the Court could be satisfied that applicant is an office bearer in said trust and he has been duly authorized by the trust. Thus he failed to show that he is an "aggrieved" person from impugned judgment and order dated 11.07.2019, and he is legally authorized person to prefer an appeal against the judgment dated 11.07.2019, inasmuch as no cogent and effective reason has been disclosed in explanation of the delay. Inasmuch, the applicant failed to disclose the name of the persons through whom the applicant came to know about the impugned judgment and order. An application under Section 5 of the Limitation Act is liable to be

dismissed.

Learned counsel for the revisionist submitted that deponent of the affidavit filed in support of the application under Section 5 of Limitation Act before the Court below, is present revisionist Ambuj Vijay who is appellant before the Court below. Minutes of the meeting of trust dated 18.12.2019 filed as annexure No.4 to the affidavit filed in support of the present revision, wherein it is stated that meeting was convened in chairmanship of Sri Sushil Vijay Lal, wherein Sri Vijay Lal, Chairman has expressed his inability to discharge his duties as President of the Trust due to health reason and he tendered his resignation in the meeting. One member proposed the name of Sri Ajay Garg who is younger brother of Sri Sushil Vijay Lal but Sri Ajay Garg also declined his consent for the post and ultimately the name of Sri Ambuj Vijay was approved as President of the trust and this has been resolved by consensus of the members of trust that Sri Ambuj Vijay is authorized to prosecute all the cases which are pending in the Courts on behalf of trust.

He next submitted that revisionist was duly authorized by the consensus of members of trust to prosecute all the Court cases on behalf of the trust, and he was appointed as President of the trust in the meeting of 18.12.2019, but the minutes of the meeting could not be filed alongwith appeal due to inadvertence of learned counsel before the Court below.

He further submitted that in light of the said minutes of the meeting of members of trust dated 08.12.2019, the revisionist is a duly authorized person to prefer and appeal against the judgment of acquittal in the present case, and it cannot be said that he has no locus-standi to file an appeal, or he is not aggrieved person. The revisionist is supposed to be the "aggrieved person" within the meaning of Section 372 Cr.P.C. being president of the trust and he is duty bound to take all legal action in the best interest of the trust and his property.

Learned court below has wrongly dismissed the application for condonation of delay taking hyper technical approach, due to which the appellant has been deprived of presenting his case taken in the appeal before the appellate court.

Section 2(wa) of Cr.P.C. defines "victim" means a person who has suffered any loss or injury cause by the reason of the act or omission for which the accused person has been charged and the expression "victim" includes is/her guardian or legal heirs.

Section 372 of the Code of Criminal Procedure , 1973 is being reproduced as under:-

"372. No appeal to lie unless otherwise provided.--No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:

[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."

Thus from perusal of Section 372 it appears that victim has been accorded a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting him for a lesser offence or imposing inadequate compensation, and such appeal shall lie before the Court to which an appeal against conviction ordinarily lies.

Section (2wa) of Cr.P.C. provides that a guardian or legal heir of the victim is also included within the definition of victim. First Information Report in the case was lodged by them, President of the trust Dr. Aditya Bihari Lal in that capacity and not a personal capacity and it is admitted that Sri Aditya Bihari Lal died on 22.06.2017, but according to the minutes of the meeting dated 08.12.2019 the appellant, the present revisionist, was appointed as President of the trust and he has been authorized by the trust to prosecute the cases pertaining to trust before the Courts, thus he will be treated as victim under proviso to Section 372 Cr.P.C. The grounds of delay are duly explained in objection under Section 25 of the Act, however, it appears that minutes of meeting could not be produced before the Court below, due to inadvertence of counsel for the appellant and for that reason learned trial court observed that applicant/appellant failed to satisfy the court with regard to the fact that he is duly authorized person by the trust to prefer and prosecute the present appeal in order to avoid technicalities and with a view to consider the hearing of the appeal in accordance with law.

In **Sobhanakumari K. Vs. Santosh @ Pallan Shaji [2018 (1) KHC 195]**, a Division Bench of Kerala High Court held that there is no time limit stipulated under the Limitation Act to file an appeal by a victim under the proviso to Section 372 of the Code. If at all an appeal is filed beyond the time period of 30/60 days, only an affidavit explaining the reason for the delay is to be filed by the

victim with the appeal. Whereas in the present case the appellant had filed an application for condonation of delay alongwith memo of appeal before the court below, but the application for condonation of delay has been rejected by the impugned order. The appellant approached the present Court for filing an appeal against the judgment of acquittal recorded by trial court, as victim of the alleged offence and it was not desirable on the part of learned appellate court to foreclose the right of the victim to challenge the verdict of acquittal on technical ground of locus-standi and limitation. Even the delay in filing the appeal was also not very long, there was a gap of four months between passing of impugned judgment of acquittal and filing of appeal which also includes period of limitation prescribed for the same. Therefore, the impugned order passed by learned court below is vitiated by factual and legal error.

The revision is liable to be allowed and the delay accorded in filing the appeal before the court below against the judgment of acquittal is liable to be condoned in the interest of justice.

Learned court below has dismissed the application under Section 5 of the Limitation Act, without considering the grounds of delay mentioned in the said application duly supported by an affidavit of deponent/appellant.

The delay in filing the appeal before the Court below is hereby condoned and the application under Section 5 of the Indian Limitation Act is allowed. The appellate court is directed to hear the appellant on question of admission and in case appeal is admitted, it would be decided in accordance with law after after giving opportunity of hearing to both sides.

The revision is **allowed**, with above observations.

Order Date :- 18.10.2023

Ashish/-