

Neutral Citation No. - 2024:AHC-LKO:56891-DB

Chief Justice's Court

Case :- SPECIAL APPEAL DEFECTIVE No. - 453 of 2024

Appellant :- Chandra Prakash Tiwari

Respondent :- State Of U.P. Thru. The Prin. Secy. Home Lko
And 3 Others

Counsel for Appellant :- Shrikant Mishra, Advocate.

Counsel for Respondent :- Sri Pratul Kumar Srivastava
Standing Counsel.

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Jaspreet Singh, J.

1. Heard Sri Shrikant Mishra, learned counsel for the appellant and Sri Pratul Kumar Srivastava, learned Standing Counsel for the State-respondents.
2. The instant special appeal has been filed against the order dated 13.12.2022 passed by the learned Single Judge in Writ-A No.8305 of 2022 (Chandra Prakash Tiwari Vs. State of U.P. & others) whereby the writ petition filed by the appellant was dismissed noticing that the order impugned in the writ petition was of the year 2013 and no cogent explanation was given by the appellant for filing the writ petition after nine years.
3. Learned Single Judge also noticed that there was sufficient material on the basis of which the impugned order of punishment had been passed after affording an opportunity of hearing hence it declined to interfere in exercise of its jurisdiction under Article 226 of the Constitution of India.
4. The instant appeal is also accompanied by an application seeking condonation of delay of 583 days bearing I.A.No.1 of 2024.

5. Submission of the learned counsel for the appellant is that his erstwhile counsel Sri Ranjit Singh had assured the appellant of filing his special appeal against the judgment of the learned Single Judge and since 30.01.2023 he kept informing the appellant that his appeal had been filed and would be taken up soon after the Holi Vacation. Thereafter similar response was given by his counsel that his appeal would be taken up in the forthcoming month and this went on through the entire year of 2023 and even till the month of May 2024. It is only thereafter the appellant suspected that perhaps his counsel was not guiding him appropriately and he then made a complaint against his erstwhile counsel and engaged the present counsel who has filed the instant appeal and in the aforesaid context it has been urged that the delay in filing the appeal be condoned.

6. Learned counsel for the appellant has further urged that the impugned order of punishment which was affirmed by the Appellate Authority is bad as it does not meet the basic standard of compliance with the principles of natural justice; inasmuch as the orders are without any reason, hence were liable to be set aside but this aspect has not been taken note of by the learned Single Judge while dismissing the writ petition. Accordingly, the instant appeal be heard on merits.

7. The Court has considered the submissions of the learned counsel for the parties and from the perusal of the material on record, it appears that the reason as indicated by the appellant for seeking condonation of delay of 583 days is not adequately explained as the blame has been put on the counsel allegedly engaged by the appellant who kept giving him incorrect information regarding filing of the special appeal.

8. The explanation does not inspire confidence for more than one reason.

Firstly, the present appellant has been engaged in several litigation and he is not new to it. He had filed three writ petitions since 2017 and it cannot be assumed that he did not know about the legal requirements and that he could not gain information of the status of his case which otherwise is available in public domain and could be ascertained easily from the website of the Court.

Secondly, in this affidavit seeking condonation of delay, it has not been disclosed on which date the appellant had got his affidavit sworn at the time when he had handed over the papers to his erstwhile counsel. Had there been some truth to his alleged allegation then he could have indicated the date he got his affidavit sworn in the first instance as without it his special appeal could not have been filed by his erstwhile counsel.

Thirdly, it appears that deliberate allegations have been levelled against his erstwhile counsel only to cover the period of delay. In paragraph-12 of the affidavit seeking condonation of delay, it has been stated that the appellant had made a complaint against the said counsel with the Bar council but from the perusal of the complaint which has been brought on record as Annexure-A-1, there is no detail of the said counsel mentioned in the said complaint as neither his address nor his enrollment number or his mobile number has been mentioned. Moreover, it has not been indicated as to how the complaint was sent to the Bar Council as there is no postal receipt nor any receiving is on record nor any update or status of the complaint has been mentioned which clearly indicates that the said complaint is merely an eye-wash and has been deliberately introduced for seeking condonation of delay. The alleged complaint made against his lawyer being bereft of necessary details does not inspire confidence.

Fourthly, there is another reason why the explanation as tendered by the appellant does not inspire confidence and that is the fact that the appellant himself has been in the police service and it cannot be said that he is not well versed with the court proceedings especially when he had already filed three petitions earlier relating to his service matter and has also been involved in certain criminal cases where he has been acquitted. Hence the explanation as tendered does not appear to be bonafide.

9. Significantly, for seeking condonation of delay it is not the length of delay which is material but the sufficiency of cause. A long delay if sufficiently explained can be condoned whereas in case if the cause shown is not sufficient then even a short delay may not be condoned. In the instant case, the cause shown for the aforesaid reason does not inspire confidence to persuade this Court to condone the delay of 583 days.

10. Another fact which is reflected from the record is the that the appellant had filed his writ petition assailing the order of the year 2013 in the month of December 2022 almost after nine years and in the entire petition, there is not a single whisper regarding the latches.

11. There is a difference between a matter being barred by limitation and the petition which suffers from the vice of latches. In a writ petition the provisions of the Limitation Act do not apply, however, the Courts have evolved the concept of latches to ensure that a person who approaches the Court must do so promptly while invoking the extraordinary jurisdiction of this Court under Article 226/227 of the Constitution of India.

12. A writ court exercises powers under Article 226 of the Constitution of India, which is a purely discretionary. Thus, the issue of latches assumes significance as it guides the Court to

determine whether the 'lis' before it deserves the indulgence in order to exercise its discretion in befitting matters. This is quite different from a proceedings which is governed by the Limitation Act and in terms of Section 3 of the Limitation Act, even if at all, a party does not raise the issue of limitation yet it is incumbent upon the Court to look into this aspect.

13. In the aforesaid circumstances, though the issue of limitation is not attracted to a writ petition but taking an overall scenario, the Court would be well justified in refusing to entertain a petition on the ground of laches. This has been noticed by the Apex Court in *Printers Mysore Ltd. Vs. M.A. Rasheed and others* (2004) 4 SCC 460 and *Northern India Glass Industries Vs. Jaswant Singh and others* AIR 2003 SC 234.

14. This aspect has been taken note of by the learned Single Judge while dismissing the petition as it did not find any cogent reason for interfering with the order of punishment and that too after nine years.

15. The two decisions cited by the learned counsel for the appellant in *C/M Distt Cooperative Bank Ltd. Vs. U.P. Cooperative Institutional Service Board & another*, 2019 SCC OnLine All 4646 and *Constable (Civil Police) Sandeep Kumar Vs. U.P. Public Service Tribunal, Lko & others*, MANU/UP/2268/2023 are of no consequence at this stage as the delay in filing the appeal is under consideration and only if the delay is condoned and the laches in filing the petition is found satisfactory only then the merits can be examined.

16. In light of the aforesaid discussions, this Court does not find that there is any adequate explanation tendered to seek condonation of delay in filing this appeal and moreover the petition itself suffered from laches as the petition was filed after nine years.

17. In light of the aforesaid, this Court does not find any palpable error committed by the learned Single Judge in exercise of its jurisdiction while dismissing the writ petition. Accordingly, the application for condonation of delay is dismissed and consequently appeal too is dismissed. Costs are made easy.

Order Date :- 21.8.2024
ank

(Jaspreet Singh, J.) (Arun Bhansali, CJ.)