

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.827 of 2013

ORDER:-

The revision petitioner is the accused in C.C.No.232 of 2010 on the file of the I-Additional Judicial Magistrate of First Class, Warangal. The case originally pertains to Cr.No.44 of 2007 of Khammam II-Town P.S.. and the charge sheet was filed in the Court at Khammam. It was registered as C.C.No.346 of 2007. Subsequently, in pursuance to the order of the High Court in Tr.Crl.P.No.179 of 2008, dated 18-01-2010, the case was transferred to the Court at Warangal and re-numbered as C.C.No.232 of 2010.

2. The learned trial Magistrate by Judgment dated 27-06-2011 held that the offences alleged against the revision petitioner/accused under Sections 448 and 497 of IPC., are not proved and accordingly acquitted him of the said charges. Against the Judgment of acquittal, the *de facto* complainant, who is 2nd respondent herein and who was examined as PW.1 during the course of trial, preferred an appeal before the High Court. However, his appeal was returned by the High Court on 29-09-2011 on the ground that appeal against acquittal by the Magistrate lies to the District and Sessions Court. On 06-09-2012 the *de facto* complainant PW.1 filed Criminal Appeal before the Sessions Judge, Warangal and since there was a delay of 334 days in preferring the same, Crl.M.P.No.1865 of 2012 was filed. By Order, dated 11-03-2013, the learned Sessions Judge allowed the said petition condoning the delay in preferring the appeal. Aggrieved by the said orders, the accused preferred the revision contending that the learned Sessions Judge has erred in condoning the inordinate delay of 334 days in preferring the appeal against acquittal, that absolutely no satisfactory grounds are shown for condoning the delay and hence, the revision.

3. Learned Counsel appearing for the petitioner/accused submits that admittedly the High Court has returned the appeal filed by the *de facto* complainant – PW.1 on 29-09-2011 on the ground that the appeal has to be filed before the learned Sessions Judge. After the said return, for almost nearly a year, the *de facto* complainant – PW.1 has not preferred the appeal before the learned Sessions Judge and the

ground that is urged is not at all a valid and reasonable ground for condoning the delay. The contention of the *de facto* complainant – PW.1 that he has waited for the State to prefer an appeal against the acquittal and since that appeal was not filed, he filed the appeal in hand is not at all a tenable ground. Learned Counsel further submits that the learned Sessions Judge has erroneously condoned the inordinate delay and hence the revision.

4. On the other hand, learned Counsel appearing for the 2nd respondent-*de facto* complainant-PW.1 submits that the *de facto* complainant was under a *bona fide* impression that the State will prefer an appeal against the acquittal and therefore he waited for nearly a year and having come to know that State is not preferring any appeal, he preferred the appeal. Learned Counsel further submits that the impugned order is an interlocutory order passed in Criminal Miscellaneous Petition and the same is not open to revision. Learned Counsel further submits that in the matter of condonation of delay, the Courts have to be liberal and suffice it if the reasons shown in the affidavit to condone the delay are *bona fide*. The delay has to be explained with reference to the period that is permissible as per the Limitation Act and hence the explanation of the *de facto* complainant-PW.1 that within the period of limitation, he preferred the appeal before the High Court by itself shows that he has been *bona fide* in pursuing his remedies.

5. The point that arises for consideration is as to whether order in CrI.M.P.No.1865 of 2012 passed by the learned Principal Sessions Judge, Warangal suffers from any material illegality or irregularity warranting interference by the revisional Court?

6 . **Point:-** Before advertng to the factual aspect, the objection of the learned Counsel appearing for the 2nd respondent-PW.1 needs to be considered. Firstly, it is submitted that since interlocutory order is passed in CrI.M.P., the same is not open to revision. This contention of the learned Counsel for the 2nd respondent-PW.1 is refuted by the revision petitioner contending that the order that is passed by the Court below is condoning the delay and taking on file the appeal which has been hopelessly barred by limitation. By placing reliance upon the decision of the Supreme Court reported in **MADHU LIMAYE v. STATE OF MAHARASHTRA (1977) 4 SCC 551**), the learned Counsel submitted that the revision can be entertained and the High Court has got the inherent powers under Section 482 Cr.P.C.

7. The Judgment of the Supreme Court is clear on the aspect that the powers of the High Court under Section 482 Cr.P.C., cannot be circumscribed by other provisions of the Code. Para 10 of the Judgment rendered by a Three Judge Bench of the Supreme Court needs to be re-produced which answers the question:-

“As pointed out in Amar Nath's case (supra) the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding is to bring about expeditious disposal of the cases finally, More often than not, the revisional power of the High Court was resorted to in relation to inter- locutory orders delaying the final disposal of the proceedings. The Legislature in its wisdom decided to check this delay by introducing sub-section (2), in section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge) for exercise of the revisional power in relation to any interlocutory order, on the other, the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of section 482, however, it would follow that nothing in the Code, which would include subsection (2) of section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court". But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is-the harmonious way out ? In our opinion, a happy solution of this problem would be to say that the bar provided in sub-section (2) of section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code. the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of, a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction. then the trial of the accused will be without jurisdiction and even after his acquittal a second trial after proper sanction will not be barred on the doctrine of *autrefois acquit*. Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused upto the end ? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure, the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with

section 482 of the 1973 Code. even assuming. although not accepting, that invoking the revisional power of the High Court is impermissible.”

8. In view of the above authoritative pronouncement, I see no substance in the objection of the 2nd respondent/PW.1 that no revision lies against the orders of the lower Court by and under which the delay of 334 days in preferring the appeal has been condoned.

9. The other contention of the learned Counsel appearing for the 2nd respondent/PW.1 is that in the matter such as this what is required to be shown is that there should be sufficient cause for the delay and the cause must be referable to period prior to expiry of limitation. In support of this contention, the learned Counsel relied upon a decision of the Supreme Court in **AJIT SINGH THAKUR SINGH AND ANOTHER v. STATE OF GUJARAT (AIR 1981 S.C., 733)**. The relevant observations of the Supreme Court in para 6 may be reproduced.

“... .. Now, it is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation.”

10. There is no dispute with the proposition of law that in order to invoke the provisions of the Limitation Act, it is for the defaulting party to show that there existed sufficient cause which prevented him from taking recourse to the legally available remedies within the prescribed period of limitation. The contention of the learned Counsel for the 2nd respondent-PW.1 is that since within the period of limitation i.e., 90 days, the respondent-PW.1 has approached the High Court with an appeal against acquittal, any amount of delay subsequent thereto cannot be taken as delay in preferring the appeal. The submission of the learned Counsel is not sustainable. The law provides for the period of limitation. The aggrieved person is to avail the

remedies available within the prescribed period of limitation. If the same has not been availed within the limitation and if he shows the justifiable and reasonable grounds for not availing the remedy within limitation, the same can be condoned subject however to the condition that the reasonable and satisfactory explanation should be offered.

11. It is no doubt true that the Courts have to be liberal in the matter of condoning the delay but if the conduct of a party is such that it shows gross negligence or inaction on his part to avail the remedy, the same cannot be condoned. Only a person with sufficient cause and reasonable grounds who could not prosecute the remedy either within the period of limitation or subsequently thereto till he approaches the Court can be condoned only if valid reasons are shown therefor.

12. Adverting to the facts of the case in hand, what is noticed is that the 2nd respondent-PW.1 has failed to give any reasonable or sufficient grounds for condoning the inordinate delay of preferring the appeal against acquittal. The dates relevant may briefly be noticed.

27-06-2011	Judgment pronounced by the trial Court acquitting the accused.
29-06-2011	Copy application filed in the trial Court
08-07-2011	Certified copy of the Judgment delievered to the <i>de facto</i> complainant/PW.1

19-09-2011	<i>De facto</i> complainant-PW.1 filed appeal against acquittal before the High Court bearing S.R.No.31299 of 2011
29-9-2011	The Registry of the High Court returned the appeal to the 2 nd respondent-PW.1 stating that an appeal lies to the District and Sessions Court as it is an appeal against the Judgment of acquittal passed by the Magistrate.
06-09-2012	Criminal Appeal filed before the Sessions Judge, Warangal with petition to condone the delay of 334 days

13. It is manifest from the above narration of events that when the appeal filed by the respondent/*de facto* complainant/PW.1 was returned by the High Court stating that an appeal has to be preferred before the Sessions Judge, Warangal on 29-9-2011, for nearly a year i.e., till 06-09-2012 the 2nd respondent-PW.1 did not prefer the appeal thereby availing the remedy of appeal against acquittal. The ground that is stated by the 2nd respondent-PW.1 for this delay is innocuous. According to him,

after the High Court returned the appeal preferred by him, he was under the impression that the State would prefer an appeal against the acquittal before the Sessions Judge. This ground is absolutely untenable. When the Judgment of acquittal was passed by the Magistrate on 27-06-2011, if at all the State wanted to prefer the appeal there against, they had a period of 90 days, which expired by 26-09-2011. The State has not preferred the appeal. It is the *de facto* complainant-PW.1 who preferred the appeal in the High Court. Till 29-09-2011, when the appeal filed by the *de facto* complainant/PW.1 was returned by the Registry of the High Court, the State did not prefer any appeal. When that was the factual scenario, it is hard to believe that the 2nd respondent-PW.1 would have been under the impression that the State would go in appeal against the acquittal and wait nearly for a year, after the High Court has rejected the appeal filed by the 2nd respondent/*de facto* complainant.

14. Learned Sessions Judge while condoning the delay has taken this contention of the 2nd respondent-PW.1 in to consideration, which in my opinion cannot be said to be valid and sufficient cause for condoning the delay.

15. A brief reference to the facts of the case need be made. PW.1 the *de facto* complainant is working as an Assistant Section Officer in the Secretariat, Hyderabad. His wife by name Narsamma is working as Hostel Warden Officer in Khammam District. In 1987, both PW.1 and Smt.Narsamma got married in Bhadrachalam Temple by exchanging garlands. It is a love marriage. Due to their professional avocations, while the husband-PW.1 was staying at Hyderabad, his wife Narsamma was staying at Khammam in the Government Quarters provided to her by virtue of her Office. Both of them, however, were exchanging their visits in the holidays. The wife of 2nd respondent is said to have developed illicit intimacy with the accused, who is said to be working as a Head Constable in the Police Department at Khammam. On 13-03-2007 when he visited the quarters where his wife was living at about 07.00 p.m., the *de facto* complainant – PW.1 has found his wife Narsamma and the accused both lying on bed in naked condition and in a compromising posture. Immediately, the accused was apprehended and the prosecution launched. The learned Magistrate by the Judgment found that the allegations of PW.1 for the offences under Sections 448 and 497 IPC., are not proved against the revision petitioner/accused.

16. In view of my findings, upon considering the material on record, it is noticed that

the impugned order suffers from material irregularity warranting interference. The same cannot be sustained in view of the foregoing discussion. The point is answered accordingly.

17. In the result, the Criminal Revision Case is allowed setting aside the order, dated 11-03-2013, passed by the learned Principal Sessions Judge, Warangal, in CrI.M.P.No.1865 of 2012.

Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

M.S.K.Jaiswal, J

June, 2015

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