

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.977 of 2017

Arising Out of PS.Case No. -86 Year- 2009 Thana -C.B.I CASE District- MUZAFFARPUR

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Priyanka Kumari Wife of Sanjay Kumar , Resident of Village- Malda, P.S.
and P.O.- Barbigha, District- Sekhpura at present Residing at Machhli Gali,
Govardhan Lane , Raza Bazar, Patna.

.... Appellant/s

Versus

The State of Bihar Through The Vigilance Investigation Bureau, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mrigank Mavli
: Mr. Prince Kr. Mishra
For the Respondent/s : Mr. Rama Kant Sharma(L.O,I/C Vigi)
: Mr. Rakesh Kr. Sharma

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR
TRIVEDI
ORAL ORDER

5 18-05-2017 Heard learned counsel for the appellant as well as

learned counsel for the Vigilance over I.A. no. 591 of 2017 filed

under Section 5 of Limitation Act.

The delinquent, who amasses properties disproportionate to his income by illegal means and for that, inspite of presence of Prevention of Corruption Act, the legislature found it expedient in the public interest to have their illegally acquired properties confiscated and for that, Bihar Special Court Act has been brought into existence. The virus of the Act has been approved by the Hon'ble Apex Court in *Yogendra Kr. Jaiswal vs. State of Bihar (2016) 3SCC 183* save and except scrapping Rule 12. Under the rules, Rule-11, apart from others deals with



mechanism for smooth sailing at the proceeding, whereunder sub-rule "*chha*" provides an opportunity to the delinquent to challenge the valuation having fixed by the agency and in case so challenged, the Court has been empowered to take assistance of an expert in getting the revaluation done. Furthermore, in terms of Section 9 as well as 17 of the Act, all the orders happen to be appealable one. There happens to be no scope for revision nor the order has been categorized as revisable order. The purpose for deletion of said provision happens to be to avoid the legal complicity, so that purpose of Act should not frustrate. That happens to be reason behind that apart from judgment, all kinds of order has been made appealable order.

Learned counsel for the appellant has submitted that at the end of the appellant though, wrong forum has been chosen at an earlier occasion by way of filing Cr. Rev.no. 896 of 2014 which at an earlier occasion was entertained and further, vide order dated 05.12.2014, *status quo* was granted subsequently, did not find favour and was held as non-maintainable vide order dated 15.02.2017 with an observation that "dismissal of the present application on account of maintainability will not debar the petitioner from preferring appeal in accordance with law" and so virtually, the Revisional Court paved the way for condoning delay as also provides a good cause for getting the limitation condoned.



Apart from this, it has also been submitted that even in worst case, there happens to be bonafide on the part of the appellant in pursuing the wrong forum and in likewise manner even after considering that under wrong advise, the appellant persuaded the criminal revision, for that appellant should not be penalised. Furthermore, putting reliance over *Coal India Ltd. v. Ujjal Transport Agency* reported in *2011 (1) SCC pg. 117*, it has been submitted that delay be condoned.

Learned counsel for the Vigilance has submitted that two sections need to be taken note of for proper adjudication of the issue. The first section happens to be Section 9 and the second section happens to be Section 17 and after having parallel scrutiny of both the sections, it is apparent that any order passed by the Special Court is appealable and not revisable. Because of the fact that by the order impugned, the prayer of the appellant has been considered and disposed of in its finality, therefore, there would not be any kind of controversy or dilemma over appreciation of the order and further, identifying it to be a final order, appealable one. Therefore, purposely and intentionally, wrong forum has been used to defeat the ends of justice because of the fact that the proceeding is to be concluded within a definite time frame which the appellant, by way of such activity, had frustrated. Therefore, condonation of limitation in filing this



appeal under I.A. no. 591 of 2017 is fit to be rejected.

Condonation of limitation is an extraordinary exert which has been vested to the Court in order to protect the legal right of the aggrieved which is found eclipsed on account of elapse of statutory period, for which he has reasonable explanation. That explanation is subject to appreciation of the Court which may or may not appreciate. Furthermore, limitation puts an embargo for availing such liberty which is found since before. Had there been an appeal within the time frame, it was entertainable but after crossing the barrier, the right is evaporated and now, his right is to be revived by condoning the delay and for that, the Court has to see whether there happens to be bonafide conduct at the end of the appellant. Bonafide means there should not be negligence nor willful action. Now coming to the present case, the Act does not provide revision. When Act did not provide revision then in that event, filing of revision, though had obtained *status quo*, would not exonerate the appellant from the liability to pursue with an appeal instead of revision. The conduct of the appellant suggests that he became under advantageous position after getting *status quo* and ignored the issue deliberately for such a long period covering three years and further, allowed frustration of the order impugned. Had there been bonafide conduct at the end of the appellant, she should have identified the mistake in terms thereof,



withdrawn the revision and had filed an appeal. Virtually, appellant had gone in hybernation enjoying the privilege of *status quo*.

That being so, no cogent reason is found to condone the delay appreciating conduct of the appellant as bonafide consequent thereupon, I.A. no. 591 of 2017 is dismissed whereupon, instant appeal is found barred by the law of limitation and is accordingly, found non-maintainable and is summarily rejected.

(Aditya Kumar Trivedi, J.)

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