

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.84501 of 2019

Arising Out of PS. Case No.-77 Year-2007 Thana- GARDANIBAG District- Patna

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Pritam Son of Doman Mandal, Resident of Village- Kiranpur, P.S.- Medini Chowki, District- Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Bihar Staff Selection Commission, Patna. Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Om Prakash Maharaj, Adv.

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date: 19-12-2019

The present petition has been filed for quashing the order dated 12.06.2018 passed in Cr. Appeal No. 128 of 2018 by the learned District and Sessions Judge, Patna whereby and where-under the appeal has been admitted, after condoning delay of 702 days, which had occurred in preferring the appeal by the State of Bihar against the judgement dated 20.05.2016 passed by the learned Judicial Magistrate-1st Class, Patna, acquitting the petitioner herein in connection with G.R. No. No. 494/ 2007 arising out of Gardanibagh P.S. Case No. 77 of 2007.

2. The only issue raised by the learned counsel for the petitioner is that the learned District & Sessions Judge, Patna has condoned the delay in filing the appeal by the impugned



order dated 12.06.2018, without issuing notice to the petitioner herein.

3. At this juncture, it would be relevant to mention that as per Article 114 of the Schedule to the Limitation Act, 1963, the period of limitation for filing an appeal from the order of acquittal under Sub-Section (1) or Sub-Section (2) of Section 417 of the Code of Criminal Procedure, 1898, which is Section 378 of the Code of Criminal Procedure, 1973 is 90 days from the date of order of appeal, hence, Section 5 of the Limitation Act, 1963 would be applicable for the purposes of condonation of delay in filing the criminal appeals against the judgement of acquittal, hence, it would be relevant to reproduce Section 5 of the Limitation Act, 1963 herein below:-

“5 Extension of prescribed period in certain cases.
—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. Explanation.— The fact that the appellant or the applicant was misled by any order, practice or judgement of the High Court in ascertaining or computing the prescribed period may be sufficient



cause within the meaning of this section”.

4. A bare perusal of Section 5 of the Limitation Act, 1963 would show that an appeal can be admitted after the prescribed period, if the appellant satisfies the court that he had sufficient cause for not preferring the appeal within the prescribed time period. In the present case, this Court had put a query to the learned counsel for the petitioner herein as to how it can be demonstrated that the State of Bihar (appellant before the learned court below in Criminal Appeal No. 128 of 2018), has not been able to satisfy the Ld. Court below that it had sufficient cause for not preferring the appeal in time, in response whereof, the learned counsel for the petitioner could neither show from the records of the present petition, to which a copy of the delay condonation petition has not been annexed, nor could demonstrate that the State of Bihar did not have sufficient cause for not preferring the appeal in time.

5. On the contrary, the learned counsel for the respondents has merely argued before this Court that the petitioner had filed a writ petition bearing CWJC No. 17482 of 2016, which was allowed by a co-ordinate Bench of this Court vide Judgment dated 16.11.2017 and the respondent authorities especially those of the Bihar Staff Selection Commission, Patna



were directed to take appropriate steps to forward its recommendation in favour of the petitioner for appointment as Junior Engineer to the appropriate authorities of the Water Resources Department, Patna for taking the recommendation to its logical conclusion by issuance of appointment letter, within a period of eight weeks from the date of receipt/ production of a copy of the judgement, hence by way of vengeance, the respondent authorities have preferred the aforesaid Criminal Appeal.

6. I have heard the learned counsel for the petitioner and perused the materials on record. It appears that the aforesaid judgement passed by the learned Single Judge dated 16.11.2017, in CWJC No. 17482 of 2016 was challenged by the Bihar State Staff Selection, Patna in LPA No. 1375 of 2018 and the learned Division Bench of this Court, by an order dated 29.01.2019, had though consigned the said appeal to records, nonetheless, with the following observations:-

“4. In the wake of the aforesaid facts which are on record merely because an appeal has been filed against the order of acquittal of the criminal case cannot be a ground to question the correctness of the finding recorded by the learned Single Judge which is based on the material on record.

5. Shri Lalit Kishore, learned Senior Advocate,



urged that the respondent-petitioner does not possess even the fundamental knowledge of engineering and consequently, his selection which was an outcome of the alleged dubious activities alleged against him should not be upheld by this Court. Moreso, when the respondent-petitioner approached this Court after a very long time of the conclusion of all the proceedings, the writ petition itself was filed in the year 2016 whereas the selection were of the year 2007. The passage of nine years was also, therefore, made a ground to question the discretion exercised by the learned Single Judge.

7. In the given circumstances, therefore, it is evident that in spite of the cancellation, the Commission after the judgment in the case of Rajesh Kumar and Ors. (supra) by the Supreme Court proceeded to declare the results and place the name of the respondent-petitioner at serial No. 37. It is in this background that the learned Single Judge, in our opinion, rightly came to the conclusion that the Commission was in effect questioning the judgment of the trial Court. If an appeal has been filed, the success or failure would obviously govern the fate of the respondent-petitioner.

8. We are, therefore, not inclined to entertain this appeal, subject to the observation that in the event the appellate Court in the criminal case reverses the



judgment of the trial Court or holds the respondent-petitioner guilty, then in that event, it will be open to the appellant-Staff Selection Commission to take a decision.”

7. It is thus evident that on the date on which the learned Division Bench of this Court, vide order dated 29.1.2019, had made an observation regarding the aforesaid Cr. Appeal pending before the learned court below, the learned court below had already condoned the delay in filing the appeal and had admitted the aforesaid appeal bearing Cr. Appeal No. 128 of 2018. In fact the learned Division Bench of this Court had further observed that in case the learned appellate court in the criminal case reverses the judgement of the trial Court or holds the petitioner herein guilty then, in that event, it would be open to the Staff Selection Commission, Patna to take a decision. Thus, no interference was sought to be made with the decision of the learned appellate court, which had already admitted the aforesaid Cr. Appeal No. 128 of 2018, after condoning the delay.

8. It would be worthwhile to mention here that though the learned Sessions Judge, Patna had condoned the delay in filing of the criminal appeal and had admitted the said Cr. Appeal No. 128 of 2018 vide order dated 12.06.2018, however, the present petition has been filed belatedly, after a lapse of about 525 days



approximately from the date of passing of the impugned Order by the learned Sessions Judge, Patna i.e. 12.06.2018, apparently only after the petitioner had appeared in the aforesaid appeal proceedings bearing LPA No. 1375 of 2018, made submissions regarding his acquittal by the Ld. Trial Court as also about the pendency of the connected Cr. Appeal No. 128 of 2018, leading to the learned Division Bench of this Court passing the ensuing Order dated 29.01.2019, noticeably clarifying that in case the learned appellate court in the criminal case reverses the judgement of the trial Court or holds the petitioner herein guilty then, in that event, it would be open to the Staff Selection Commission, Patna to take a decision.

9. For the grounds stated herein above and considering the facts and circumstances of the case, as discussed herein above in the preceding paragraphs, moreso since the learned counsel for the petitioner has miserably failed to show that no sufficient cause was made out by the respondent State of Bihar in the pending Cr. Appeal No. 128 of 2018, for the purposes of condonation of delay, apart from the fact that the petitioner has demonstrated a lackadaisical and phlegmatic approach by not even bringing on record the petition filed by the State of Bihar before the learned court below for condonation of delay, this



Court finds that there is no merit in the present petition, hence
the same stands dismissed.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	22-05-2020
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