

06.06.2022
Item No.07
Suman
Ct.42

(Via Video Conference)

CRMSPL 49 of 2016
With
I.A. No. CRAN 2 of 2022

Pankaj Kumar
Vs.
Rafique Ahmed @ Bechu Mia & Anr.

Mr. Dayashankar Mishra
Mr. Rajendra Banerjee
Mr. Sushil Kumar Mishra
...for the petitioner

Mr. Apurba Kumar Datta
...for the opposite parties

This is an application for restoration of an application under Section 5 of the Limitation Act by recalling the order dated 4th March, 2022 passed by this Court.

A copy of the application has been served and affidavit of service is filed.

Affidavit of service be kept with the record.

It is pertinent to mention the background of the instant proceeding. S.L. Case No.239 of 2014 (SL Case No. 55 of 2005) under Section 3 (a) of the RP (UP) Act, 1966 was disposed of by the learned 6th Judicial Magistrate at Howrah recording an order of acquittal on 31st October, 2014.

The petitioner herein, being the original complainant filed an application for special leave to appeal which was registered as CRMSPL 49 of 2016. Along with the said appeal an application under Section 5 of the Limitation Act was filed which was registered as CRAN No.2054 of 2016 (New Number CRAN 1 of 2016).

The date of hearing of the said application under Section 5 of the Limitation Act was fixed on 4th March, 2022. On that date the petitioner did not take any step. Since the matter is pending for about six years, the petition under Section 5 of the Limitation Act was dismissed for default and in view of dismissal of the application under Section 5 of the Limitation Act, the application for special leave to appeal was also dismissed.

By filing the instant application it is stated on behalf of the petitioner that one Mr. Krishna Das Podder filed the application for special leave to appeal and the application under Section 5 of the Limitation Act. However, the name of Mr. Podder was deleted from the panel of the prosecutors on behalf of the Railways during the pendency of the instant applications. Therefore, Mr. Podder did not take any step in the instant appeal. Till 2019 no step was taken in the instant proceeding on behalf of the petitioner.

Subsequently, sometimes in March, 2019 Mr. Dayashankar Mishra, advocate was engaged in this case. However, he was prevented from taking any step as the record of the appeal was lying with the erstwhile advocate Mr. Krishna Das Podder and due to Covid pandemic Mr. Mishra could not collect the brief in connection with the instant proceeding. Only on 25th March, 2022 Mr. Mishra came to know that the application under Section 5 of the Limitation Act was also dismissed.

Under such circumstances, it is submitted by the petitioner that the application under Section 5 of the Limitation Act and the application for special leave to appeal may be restored to its file.

The learned advocate for the private respondent, on the other hand, submits that Section 362 of the Code of Criminal Procedure stands as a bar in the matter of restoration of the application under Section 5 of the Limitation Act as well as CRMSPL 49 of 2016.

Section 362 of the Code of Criminal Procedure runs thus:-

"362. Court not to alter judgment. –

Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review

the same except to correct a clerical or arithmetical error.”

It is needless to say that Section 362 is a general provision that debars all Courts from altering its judgment after it was signed.

However, Section 482 operates in a different sphere. Section 482 confers inherent power to this Court to make such orders to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure ends of justice.

Justice demands that an appeal should be disposed of in a contested manner. The petitioner being the Inspector of Railway Protection Force filed the application for special leave to appeal along with an application under Section 5 of the Limitation Act. It is true that the application for special leave to appeal was filed after the expiry of 503 days. However, the case of the petitioner was not presented before this Court when the order dated 4th March, 2022 was filed due to the fact that the filing advocate was depanelled from the panel of the Railways. Subsequently, in 2019 another panel was prepared and Mr. Dayashankar Mishra, advocate was engaged in this case. He had no paper in respect of the instant proceeding. He also could not collect such papers from Mr. Podder, the erstwhile advocate.

In view of such circumstances, this Court is of the view that the order dated 4th March, 2022 ought to be recalled and the application under Section 5 of the Limitation Act as well as the application for special leave to appeal ought to be restored to its file.

Accordingly, the instant application is allowed on contest subject to payment of cost of Rs.10,000/- to be paid to the High Court Legal Services Authority within two weeks from the date of this order.

The matter be listed in the monthly list of July, 2022.

(Bibek Chaudhuri, J.)