

Sl. No. 4

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 2094 of 2013

**India Govt. Mint
Vs.**

State of West Bengal

Mr. Arup Nath Bhattacharyya
Ms. Sreetama Biswas
Ms. Sayani Das

.... for the petitioner.

Mr. Sudip Ghosh
Mr. Bitasok Banerjee

.... for the State

Mr. Abhijit Chakraborty

....for the Opposite Party No. 2

Heard on : 23.11.2022

Judgment on : 16.12.2022

Ananya Bandyopadhyay, J. :-

This revisional application is directed against Order no. 10 dated 07.01.2013 passed by the Ld. Sessions Judge, Alipore, South 24 Parganas in criminal appeal no. 9 of 2012 arising out of judgment and order dated 04.10.2010 passed by the Ld. 7th Judicial Magistrate, Alipore, South 24 Parganas in connection with C.G.R No. 5293 of 1989.

The petitioner India Government Mint, Kolkata (A unit of Security Printing and Minting Corporation of India Limited) represented by its Deputy Manager (HR) instituted the Garden Reach Police Station case no. 345 dated

25.12.1989 against the opposite party no. 2 i.e. Shri Sarajitendra Paul implicating him of the offences punishable under Section 381/411 of the Indian Penal Code. Investigation pursued and culminated in submission of charge sheet against the opposite party no. 2 under Section 381/411 of the Indian Penal Code.

Out of eight witnesses named in the charge sheet, the prosecution was able to examine four witnesses viz, charge sheet witness no. 1, 2, 3 and 6. The Ld. Trial Court fixed 25.08.2010 for examination of the remaining four witnesses in default, to conduct the examination under the provision of Section 313 of Cr.P.C. Despite service of summons, the prosecution could not produce the aforesaid four witnesses. On the same date the Ld. Trial Court closed the evidence of the prosecution after providing sufficient opportunity to adduce evidence. Thereafter the Ld. Trial Court pronounced the judgment and order on 04.10.2010 acquitting the opposite party no. 2 of the charges under Section 381/411 IPC.

A criminal appeal no. 9 of 2012 under Section 372 of the Cr.P.C along with an application under Section 5 of the Limitation Act was filed before the Ld. Sessions Judge, Alipore, South 24 Parganas.

The petitioner contended the Ld. Sessions Judge, Alipore, South 24 Parganas on 07.01.2013 in the absence of the Ld. Advocate representing the petitioner constrained by his personal difficulty dismissed the application under Section 5 of the Limitation Act for non - prosecution in the event of inordinate delay on behalf of a government authority. The Ld. Advocate for the petitioner submitted the Ld. Court of Sessions Judge, Alipore, South 24

Paraganas unilaterally without granting a hearing dismissed the application under Section 5 of the Limitation Act frustrating the principle of *audi alteram partem*. There are serious allegations against the opposite party no. 2 who have been wrongfully acquitted of the charges indicted against him under Section 381/411 IPC. The Ld. Court of Sessions Judge as aforesaid should have considered the absence of the Ld. Advocate and granted a further date for hearing before dismissing the application under Section 5 of the Limitation Act. The Ld. Magistrate without examining all the charge sheeted witnesses evasively passed an order for acquittal which was against public interest and the petitioner company had reasonable cause to agitate against such order of acquittal and therefore, the revisional application must be allowed.

The Ld. Advocate for the opposite party no. 2 emphasized the innocence of the same to have been implicated in the offences committed under Section 381/411 IPC. The prosecution took nearly a decade to prolong the case and failed to examine eight witnesses named in the charge sheet. The Ld. Magistrate after granting several opportunities to the prosecution to assist in conducting the trial ultimately passed the impugned judgement and order acquitting the opposite party no. 2 which was just and correct. The petitioner Company filed the criminal appeal no. 9 of 2012 after a lapse of 450 days and thereafter did not take steps to pursue the same on several dates. The Ld. Sessions Judge had rightfully dismissed the revisional application under Section 5 of the Limitation Act and this Court under such circumstances shall not allow the revisional application.

The Ld. Advocate for the state submitted that the prosecution tried its best to conduct the trial and there had been no latches on the part of the prosecution and left it to the discretion of this Court.

The petitioner Company in the application under Section 5 of the Limitation Act dated 01.02.2012 *inter alia* stated that the appeal against the order of acquittal dated 04.10.2010 passed by the Ld. 7th Judicial Magistrate, Alipore Court as aforesaid should have been filed before 03.11.2010. The appeal however was filed on 01.02.2012 after a delay of 450 days from 03.11.2010. The petitioner Company was unaware and uninformed of the order of acquittal as aforesaid on the part of failure of the prosecution and the police regarding the submission of charge sheet or furnishing a copy thereof to the petitioner. The prosecution had adduced four witnesses out of eight witnesses named in the charge sheet. The prosecution witnesses who adduced evidence before the Ld. Trial Court must have been associated in certain manner with the petitioner Company having knowledge of the alleged incident involving the opposite party no. 2. Accordingly, the petitioner Company's plea of being oblivious of the filing of the charge sheet and commencement of the trial cannot be accepted. The certified copy of the judgement of acquittal was obtained after a considerable lapse of time on 14.01.2012. It is the incumbent duty of the petitioner Company as a de facto complainant to be vigilant about the Court proceedings. The Ld. Judicial Magistrate was propelled to close the evidence of the prosecution after a protracted period of above ten years. As a de facto complainant considering the severity of the offence committed, there had

been lack of pro-activeness on the part of the same. No sufficient cause plausible enough to impel and exhort the court to allow the application filed under Section 5 of the Limitation Act was elucidated. After filing the criminal appeal no. 9 of 2012 with a delay of 450 days, the appellant Company did not take steps to move the said application filed on 01.02.2012.

The Ld. Sessions Judge had observed that,

“The record shows that after the appearance of the Respondent no. 1 on 23.3.2012 the matter has been continuously posted for hearing on the pending Petition under Section 5 of the Limitation Act.

The Appellant has been absent without any intimation for the third consecutive date today since 3.9.2012.

Admittedly, the Appeal has been filed much beyond the permissible time limit and condonation of delay of as many as 450 days has been prayed in the Petition.

This is an inordinately long delay on the part of the Appellant, which surprisingly happens to represent Governmental Authority.

In view of the continuous absence of the Appellant for the last several months to appear and move its pending Petition for condonation of delay, the Court is not inclined to grant any further indulgence in the matter.

Hence,

ORDERED,

that the Petition for condonation of 450 days delay under Section 5 of the Limitation Act dated 01.02.2012 be dismissed for non-prosecution.

Consequently, the Appeal itself which has not yet been admitted stands dropped.”

The Ld. Advocate for the petitioner submitted that the instant revisional application was filed within time. The revision came up for hearing on 23.07.2013 and the matter was made to appear under the

heading "*Listed Motion*" two weeks hence by an order of this Court dated 23.07.2013.

However, the matter appeared on the list for the second time on 3.9.2022 when nobody appeared on second call. It was further posted on 31.10.2022 and on the prayer of the Ld. Advocate for the petitioner the matter was adjourned till 7.11.2022. On 7.11.2022, the matter was fixed on 11.11.2022 as a last chance on the prayer of the Ld. Advocate for the petitioner. On 9.11.2022, the petitioner was directed to serve notice upon the opposite party no. 1 and 2 for hearing on 23.11.2022. The attitude of the petitioner is writ large on the face of the record with regard to its negligence and insouciance in proceeding with the revisional application in question. The petitioner Company was not precluded or debarred under any law to mention the matter for early hearing before the concerned Bench of this High Court dealing with revisional applications. An incident that took place in the year 1989 as alleged was not dealt seriously by the petitioner Company at the trial stage. Unless and until there is manifest illegality in consideration of evidence in the case, the higher forum would generally not interfere with the judgment of acquittal passed by a Trial Court. The OP no. 2 was arrested and thereafter released on bail. The prosecution failed to prove its case whereby, the Ld. Magistrate acquitted the OP no. 2 after nearly 11 years of the complaint lodged against him. He had been subjected to further trauma and agony by the institution of the appeal before the Court of the Ld. Sessions Judge, South 24 Parganas where his presence was noted unfortunately, the appellant was absent. The application under

Section 5 of Limitation Act filed before the Ld. Sessions Judge as aforesaid did not specifically and categorically state the cause of delay to the detriment of the petitioner company involving public interest. The petitioner Company should have preferred the appeal instantly if at all it was serious about the intensity and gravity of the offence alleged to have been committed by the opposite party no. 2. In the opinion of this Court, the conduct of the Petitioner Company after filing the appeal delayed for 450 days was dismal. Casual approach on the part of the petitioner Company cannot be allowed to continue to cause harassment and predicament to the opposite party no. 2 in the event of his acquittal. The application under Section 5 of the Limitation Act was devoid of believable ground adequately and credibly justifiable to claim an order in its favour.

In **Postmaster General and Others Vs Living Media India Limited and Another**¹, the Hon'ble Supreme Court observed that,

“Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

¹ (2012) 3 SCC 563

Moreover, the conduct of the petitioner company after the filing of the aforesaid application under the Limitation Act deserves to be annihilated. The Ld. Sessions Judge as aforesaid has rightly dismissed the application under Section 5 of the Limitation Act for non-prosecution and this Court does not find it prudent to interfere with the same.

The criminal revisional application being CRR 2094 of 2013 is dismissed.

There is no order as to cost.

Let the copy of this judgment be sent to the learned trial court as well as the police station concerned for necessary information and compliance.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)