

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1271 of 2016

Arising Out of PS. Case No.-133 Year-1987 Thana- KANTI District- Muzaffarpur

=====

Bihar State Power Generation Co. Ltd , one of the Subsidiaries of Bihar State Power (Holding) Co. Ltd., Vidyut Bhawan Bailey Road, Patna through its Law Officer, Paramhans Mishra.

... .. Petitioner

Versus

1. The State of Bihar.
2. Gauri Shankar Mishra, son of Late Ram Govind Mishra, Resident of Village-Jagdishpur, P.O. & P.S.-Jagdispur Ward No. 3, District-Bhojpur.

... .. Opposite Parties

=====

Appearance :

For the Petitioner	:	Mr. Vinay Kirti Singh, Sr. Advocate Mr. Prakash Kumar, Advocate
For the OP No. 2	:	Mr. Sanjay Prakash Verma, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 11-12-2023

I.A. No. 2436 of 2016 in Cr. Revision No. 1271 of 2016

This is an application seeking condonation of delay of four years six months in filing of the present criminal revision application against the judgment dated 16.06.2012 passed by learned Additional Sessions Judge 1st, Muzaffarpur in Cr. Appeal No. 133 of 2009 corresponding to GR No. 880 of 1987 and Tr No. 2257 of 2009 arising out of Kanti P.S. Case No. 133 of 1987.

2. By the impugned judgment, learned Additional Sessions Judge has been pleased to set aside the judgment and order of conviction of the appellant-O.P. No. 2 and acquitted him from the charges under Sections 420, 467, 468 and 471 of the Indian



Penal Code (in short 'IPC'). The learned trial court had earlier convicted the O.P. No. 2 under the aforementioned provisions of the IPC and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- for the offence under Section 420 IPC, three years rigorous imprisonment and a fine of Rs.10,000/- for the offence under Section 467 IPC, three years rigorous imprisonment and a fine of Rs.5,000/- for the offence under Section 468 IPC and one year rigorous imprisonment and a fine of Rs.5,000/- for the offence under Section 471 IPC. The learned trial court ordered that the sentences under Sections 420, 468 and 471 IPC would run concurrently and sentence under Section 467 IPC would run separately.

Brief Facts of the Case

3. As per the prosecution case, the FIR giving rise to the present case was lodged on the basis of the instruction issued by the Security Officer, Muzaffarpur Thermal Power Station, Kanti. In the FIR, it is alleged that the O.P. No. 2 was engaged on adhoc basis on training for erection of power station. He was directed to produce the original ITI certificate along with the marksheet. It was indicated in the letter of employment that the joining would be accepted only on the full satisfaction about the genuineness of the documents. Later on, on information that some trained ITI apprentices in Electrician/Wireman and other trade have been



engaged on fake ITI certificate, the matter was officially verified by the Director of Labour and Training, Bihar and it was found that the ITI certificate of the O.P. No. 2 was forged.

4. After investigation, police submitted a chargesheet against him, he was put on trial and in course of trial, the prosecution examined altogether seven witnesses. No defence witness has been examined. The learned trial court had convicted him and sentenced to undergo rigorous imprisonment as stated hereinabove.

5. The Appellate Court, however, took a view that in this case, the expert had not been examined and the appellant-O.P. No. 2 had obtained ITI certificate from the ITI, Begusarai. The Appellate Court also noticed several contradictions in the evidence of the prosecution witnesses and held that the learned trial court had failed to appreciate that it is an admitted case of the appellant that he had obtained certificate of Turner from ITI, Begusarai.

Submission on behalf of the Petitioner

6. This revision application has been filed after about four and half years from the date of the impugned judgment. It is stated that the delay occurred in the official formalities in taking a decision to file revision. All that is stated in the petition is that prior to taking a decision on filing of the revision against the impugned order, it was deemed proper to ascertain the status of similar cases



and the order passed by the Hon'ble High Court in those cases. Much emphasis has been given on the submission that the revisionist in this case is the Bihar State Power Generation Co. Ltd. which is an organisation in which every judicial order passed by the Hon'ble Court are seen in its letter and spirit and only after examining its fallout, a decision for filing of an appeal or revision is taken.

7. A statement has been made to impress upon this Court that the revisionist being a Public Sector Undertaking, its request for condonation of delay be considered leniently.

8. Mr. Vinay Kirti Singh, learned senior counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court in the case of **State of Haryana versus Chandra Mani and Others** reported in (1996) 3 SCC 132, **The State of Bihar and Others versus Kameshwar Prasad Singh and Anr.** reported in (2000) 9 SCC 94 and **The State of Bihar and Others versus Janardan Prasad Singh and Anr.** reported in 2005 (2) PLJR 231. Learned senior counsel submits that in all the judgments, the Hon'ble Supreme Court has held that the question, whether limitation in a case is to be condoned or not, depends upon the facts of each case and no hard and fast rule can be laid down as to the circumstances which are sufficient for condonation or for rejection of the claim for condoning the delay.



9. Learned senior counsel submits that in the facts of the present case, the delay of four and half years be condoned and the revision application be heard on its own merit.

Submission on behalf of O.P. No. 2

10. On the other hand, Mr. Sanjay Prakash Verma, learned counsel for the O.P. No. 2 has contested the application. It is submitted that on a bare perusal of the application seeking condonation of delay, it may be found that the petitioner has not pleaded any cogent and sufficient ground for condonation of delay. It is submitted that the petitioner was well aware of the judgment of acquittal but they never obtained even a copy of the judgment on their own. It is only when the petitioner was looking for his post retiral benefits, in order to deprive him from getting the post retiral benefits, at a belated stage, firstly a criminal revision bearing No. 348 of 2015 was filed without the certified copy of the judgment impugned. Later on, after dismissal of Cr. Rev. No. 348 of 2015 as not maintainable, with liberty to the petitioner to file fresh revision, the present revision application has been filed. Learned counsel submits that, in fact, the matter relating to payment of post retiral benefits of the O.P. No. 2 travelled up to the Hon'ble Supreme Court and by virtue of the judgment of the Hon'ble Supreme Court saying that the O.P. No. 2 was not eligible to be inducted in service on the basis of the qualification of ITI (Turner Trade) and the order



of termination was never a subject matter of challenge before the Hon'ble High Court, the O.P. No.2 lost. It is submitted that before the Hon'ble Supreme Court also a plea was taken with regard to the allegation against the O.P. No. 2 of entering into service on account of forged document but the Hon'ble Supreme Court observed that "if, the respondent was not eligible to participate in the selection process, the further consequence of termination may be based either on account of forged document lose its significance as he was not eligible to be inducted in service on the basis of the qualification of ITI (Turner Trade) as being pleaded by him".

11. Learned counsel submits that this revision application was filed at the relevant time when the matter was before the Hon'ble Supreme Court, therefore, it is evident from the materials on the record itself that the O.P. No. 2 moved this Court in CWJC No. 7443 of 2013 for his post-retiral benefits, in this case LPA No. 400 of 2015 also remained pending for sometime and it is only when the LPA was pending in this Court, Cr. Rev. No. 348 of 2015 was filed but not in accordance with the Rules of Patna High Court as the complete certified copy of the impugned judgment was not filed with the revision petition. It is submitted that, only in order to impress upon the Hon'ble Supreme Court at the relevant time, the petitioner might have been advised to file a fresh revision petition against the judgment of acquittal. Thus, it is not one of those cases



in which the petitioner can plead that he was not aware of the judgment of the Court or there was some delay because of official formalities for taking a decision.

12. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Government of Maharashtra (Water Resources Department) Vs. Borse Brothers Engineers and Contractors Private Limited** reported in (2021) 6 SCC 460 and **P.K. Ramachandran Vs. The State of Kerala and Anr.** reported in (1997) 7 SCC 556. It is submitted that in the matter of condonation of delay, the Court must exercise its discretion judiciously. The submission is that in this case, the matter does not relate to any policy decision nor it relates to laying down any important question of law, thus, in absence of there being any sufficient cause being shown to this Court, the Interlocutory Application is required to be dismissed.

Consideration

13. Having heard learned Senior counsel for the petitioner and learned counsel for the O.P. No.2 as also on perusal of the records and the judicial pronouncements on this subject, this Court finds, as a matter of fact, that the petitioner was well aware of the judgment of acquittal passed by the learned Appellate Court as back as on 16.06.2012. The O.P. No. 2 was contesting his claim for post retiral benefits by filing a writ application in this Court in the



year 2013 and the fact that the O.P. No. 2 had already been acquitted was one of the grounds raised by him to make himself entitled for the post retiral benefits. After dismissal of the writ application, the same was carried out in LPA No. 405 of 2015 which was ultimately allowed on 12.05.2016. The judgment of the Hon'ble Division Bench of this Court was subject matter of challenge in SLP (C.) No. 30056 of 2016. It is in the year 2015 only after about three years of the impugned judgment, petitioner thought it just and proper to challenge the judgment of acquittal but the Cr. Rev. No. 348 of 2015 was filed without the certified copy, hence, it was held as not maintainable. The certified copy of the judgment was obtained only on 21.12.2016 and thereafter, the present revision application was filed. The petition seeking condonation of delay does not provide any specific statement as to when did the matter for filing revision was taken up for consideration and the competent authority took a decision to file the revision application.

14. The fact that the petitioner had earlier moved this Court by filing Cr. Revision No. 348 of 2015 with a delay of about three years without enclosing complete certified copy of the judgment which was dismissed as not maintainable but the petitioner had been given the liberty to file fresh revision application with all essential documents as required under law



further shows the half-hearted approach on the part of the petitioner in applying for it's remedy before this Court. The revision was filed during pendency of the LPA and refiling has been done during pendency of the Special Leave Petition.

15. In the opinion of this Court, on the basis of completely vague statements and there being no ground showing that any important question of law or a policy matter is involved in the present case, taking a cue from the judgment of the Hon'ble Supreme Court in the abovementioned judgments, this Court is of the considered opinion that the delay in this case are such that it would not be a proper exercise of judicial discretion on the part of this Court in condoning the delay. The petitioner is unable to make out a case for condonation of delay, hence, I.A. No. 2436 of 2016 is dismissed.

16. As a result of dismissal of the limitation application, the revision application stands dismissed.

(Rajeev Ranjan Prasad, J)

SUSHMA2/-

AFR/NAFR	
CAV DATE	
Uploading Date	12.12.2023
Transmission Date	12.12.2023

