

324.
08.08.2025
Bd.
Ct. 29

CRR 2033 of 2019

**Sanjib Bhattacharjee
Vs.
The State of West Bengal & Anr.**

Mr. Achin Jana
Mr. Pinaki Brata Ghosh
Mr. Suman Chakraborty
Mr. Prosenjit Ghosh
Mr. Abhinaba Roy
Mr. Koushik Karmakar
Mr. Bhaskar Dalui
Ms. Chetna Rustagi ...for the petitioner

Mr. Mrityunjoy Chatterjee
Mr. Arindam Paoli ...for the O.P.No.2

This application has been preferred challenging the order dated 18th December, 2018 passed by learned Chief Judge, City Sessions Court, Calcutta in connection with Criminal Appeal No. 54 of 2018.

By the impugned order court below has rejected the appellant's application for condonation of delay in preferring appeal against acquittal, filed under section 5 of the Limitation Act.

It is submitted on behalf of the petitioner that the a police case was initiated on the basis of a complaint lodged under section 156(3) of Code of Criminal Procedure being Amherst Street Police Station Case No. 44 of 2007 dated 20th February, 2007, and after completion of investigation police submitted charge-sheet under section 419/420/408 of the IPC. After conclusion of trial, learned trial court was pleased to acquit the accused

person/opposite party no.2 herein under Section 248(1) of the CrPC. on 23rd June 2017.

It is submitted on behalf of the complainant/petitioner that he applied for obtaining certified copy of the said judgment of acquittal on 7th July, 2017 before the copying department but the copying department completed the process of assessment only on 5th March, 2018. He further submits that due to such inordinate delay, he could not collect the information in right time and, as such, the application for obtaining certified copy was struck off. Thereafter, he again applied for certified copy of the impugned judgment and order of acquittal and the same was ready for delivery to him on 28th May, 2018.

The petitioner in order to ascertain the reason for the inordinate delay caused by the copying department had also made an application seeking information in terms of Right to Information Act, 2005 and in response to such query, learned Public Information Officer was pleased to inform that the petitioner had applied for the certified copy on 7th July, 2017 but the case record against such application was provided to the Assistant Clerk of the copying department only on 28th February, 2018.

It is further submitted on behalf of the petitioner that as soon as he obtained the certified copy of the impugned order of acquittal he preferred aforesaid appeal under Section 372 of the Code of Criminal Procedure before learned Chief Judge, Sessions Court, Calcutta being aforesaid Criminal Appeal No.54 of 2018.

He further submits that due to aforesaid reasons, delay of 347 days in preferring the said appeal had been computed by the

department reckoning from the date of delivery of judgment and, therefore, he also filed application under Section 5 of the Limitation Act on 4th July, 2018 for condonation of delay. However, learned Court below by the impugned order rejected the said application under Section 5 of the Limitation Act on the ground that the appellant/petitioner herein failed to make out sufficient cause in preferring the appeal within time and, as such, he refused to admit the appeal.

Being aggrieved by the said order, learned counsel appearing on behalf of the petitioner submits that the impugned order is vague, baseless, improper and court below failed to consider that the petitioner was not responsible for the entire period of delay and it was incidental and, therefore, not intentional. He further contended that the Court below did not consider that the appeal was *bona fide*, and there were every chance to prove good grounds for succeeding the appeal if it was heard on merits. He further submits that it is trite law that on the ground of a mere technical error, a meritorious appeal should not be thrown away. He should have taken liberal view, while adjudicating the issue of condonation of delay in order to unearth the issue of delay and, therefore, he prayed for setting aside the order impugned and to admit the appeal for hearing on merits.

Mr. Mritunjay Chatterjee, learned counsel appearing on behalf of the opposite party raised vehement objection contending that the appellant/petitioner herein ought to have acted diligently for getting the certified copy of the Trial Court's judgment and that there is no fixed mechanism about intimating the applicant when the certified copy gets ready to deliver. The petitioner ought

to have prompt in his prayer for obtaining certified copy and as after completion of the process of assessment, the petitioner failed to put the requisites i.e., folios and court fees, the copying department rightly struck down his prayer for certified copy on 9th March, 2018. Accordingly, it was a gross negligence on the part of the petitioner and for which the court below elaborately discussed the issue in the order impugned and ultimately came to a finding that the petitioner has failed to make out sufficient cause and for which his application under Section 5 of the Limitation Act is liable to be dismissed. He further submits that the order impugned is justified and does not call for interference by this Court, invoking this Court's jurisdiction under Section 482 of the Code.

On perusal of the order impugned, it appears that the Trial Court found that the explanation given by the applicant is concocted and court below did not find sufficient reason or cogent ground for condonation of delay and as such court below held that petitioner herein is not entitled to get favour for condonation of delay. He further observed that no premium can be given to the petitioner/appellant for total lethargy and utter negligence and that the prayer for condonation of delay cannot be allowed as a matter of course.

Having considered the submissions made on behalf of both the parties, it appears from information given under RTI Act, 2005 that impugned judgment was delivered on 23rd June, 2017 and the petitioner/appellant prayed for obtaining certified copy on 07.07.2017. It further appears that there is no dispute with the fact that the process of assessment for obtaining certified copy

was not made instantly and an abnormal delay was caused for whatever reasons, in making assessment about filing requisites. It is also nobody's case that after about eight months, when assessment completed, the petitioner was informed. It further appears from information supplied to petitioner on 6th June, 2018 that assessment was done on 05.03.2018 and application was struck off on 09.03.2018. It is not unnatural that petitioner or his agent was not in a position to have constant touch in taking information about readiness of assessment for a period of eight months. Therefore there is sufficient reason to believe that due to such abnormal delay in making assessment by the department, the petitioner was not aware about the date when the department had completed the process of assessment.

Therefore the instant issue is to be judged on the touchstone of ground reality that in the adversarial legal system, the usual practice is that parties entrusted their lawyer or law clerks to make necessary prayer for obtaining certified copy and the obligation of the parties is to select his lawyer or law clerk and then on payment of fees demanded by him, to trust the said agent to do the rest of the things and in most of the cases he does not have any knowledge about procedure for obtaining certified copy from the department concerned. Parties are not supposed to act as watchdog of his agent as he believes that his advocate or law clerk will look after his interest.

Apart from that appellant/complainant would not have gained in any manner whatsoever by not filing the appeal within the period of limitation. Delay alone is not enough to turn down Appellant's prayer for admission to shut the door against him

unless the explanation given in the prayer for condonation, does smack of malafides or it has been put forth as part of a dilatory strategy. Of course there cannot be a straight jacket formula for accepting or rejecting explanation furnished for the delay in taking steps but at the same time court should not proceed with the tendency of finding fault with the cause shown and reject the petition.

Looking at the explanation given in the application and keeping in view the weighty consideration that so far as practicable, an appellant ought not to be denied a hearing of appeal on merit, I find that the impugned rejection order on the ground that the petitioner was lethergetic and/or negligent in getting certified copy in time is perverse, specially when there is nothing to show that prayer for condonation of delay smacks of malafide or has been made as part of dilatory strategy and therefore impugned order is liable to be set aside.

In such view of the matter, the order impugned dated 18th December, 2018 passed in Criminal Appeal No. 54 of 2018 is hereby set aside.

The delay in filing the appeal by the petitioner/appellant is hereby condoned.

Learned court below is directed to admit the appeal and to dispose of the same on merit uninfluenced by any observation made herein, at the earliest after giving opportunity to both the parties to contest.

CRR 2033 of 2019 is accordingly disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on compliance of requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)