

THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Appeal Jurisdiction)

DIVISION BENCH: THE HON'BLE MRS JUSTICE MEENAKSHI MADAN RAI, JUDGE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

I.A. No. 01 of 2023
in
CRL. L.P. No. 7 of 2023 (Filing No.)

Union of India,
Represented by:
Mr. Bikramaditya Chowdhury, Drugs Inspector,
Central Drugs Standard Control Organisation (CDSCO),
East Zone.

..... **Applicant**

versus

1. M/s Mukul Enterprises,
13, Rifle Range Road,
(Near Bondel Gate Flyover),
Ground Floor, Kolkata,
P.O. Ballygunge,
Pin 700019.

2. Md. Mohdul Islam,
Proprietor of M/S Mukul Enterprises,
13, Rifle Range Road,
(Near Bondel Gate Flyover),
Ground Floor, Kolkata,
P.O. Ballygunge,
Pin-700019

..... **Respondents**

Application under Section 5 of the Limitation Act, 1963.

Appearance:

Ms Sangita Pradhan, Deputy Solicitor General of India with Ms Purnima Subba and Ms Natasha Pradhan, Advocates for the applicant.

Mr. Sudesh Joshi, Advocate for the respondents.

Date of hearing : 6th May, 2024
Date of judgment : 22nd May, 2024

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. The Union of India (Applicant) has moved this application under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 54 days in filing the Leave to Appeal under Section 378(3) of the Code of Criminal Procedure, 1973 (Cr.P.C.). The period of 54 days delay has been computed by the Applicant in terms of Section 378(5) of the Cr.P.C. on the ground that the complainant was a public servant.

2. The application states that by virtue of Section 378(5) Cr.P.C., the Applicant had time till 30.11.2022 to file the appeal but was filed on 24.1.2023 with a delay of 54 days. It is stated that the Applicant came to know about the judgment on acquittal on 21.6.2022 when the conducting counsel telephonically informed the Applicant. Thereafter, as mandated by rule 50 of the Drugs Rule, 1945, the Applicant sought permission through letter dated 28.6.2022 from his higher authorities, i.e., the Drugs Controller General of India, for necessary direction. It is stated that permission to challenge the impugned judgment was given vide letter dated 17.10.2022 which was received by the Applicant on 31.10.2022. Thereafter, it is stated by letter dated 1.11.2022 that a request was made to the Ministry of Law and Justice for engagement of counsel for filing appeal and the Ministry vide letter dated 7.11.2022 informed the Applicant that the Deputy Solicitor General of India may be contacted for filing the appeal. The Deputy Solicitor General

of India was thereafter telephonically informed who requested the applicant to forward the entire case papers for perusal and further course of action. The applicant vide letter dated 11.11.2022 forwarded the case papers to the Deputy Solicitor General of India who received it on 23.11.2022. On 1.12.2022, the Deputy Solicitor General of India had a conference with the Applicant where it was revealed that the documents sent by post were incomplete and accordingly on 5.12.2022, the case papers were again sent to her. The Deputy Solicitor General of India was, however, out of station since 14.12.2022 for the yearly death rites of her father-in-law at Siliguri. The Deputy Solicitor General of India had to proceed to Delhi on 25.12.2022 for an official conference. Although the documents sent on 5.12.2022 reached the address of the Deputy Solicitor General of India, it could not be received, as the entire family was out of station. It was only on 8.01.2023 that the documents could be collected from her neighbour. As the Deputy Solicitor General of India was engaged only on 1.12.2022, she applied for certified copy of the judgment on 5.12.2022 and received it on 14.12.2022. After receiving the case papers, the Deputy Solicitor General took some time to prepare the appeal and the connected applications. During this period, the Deputy Solicitor General of India was undergoing treatment for back pain and cervical spondolysis. Her child was also unwell and undergoing treatment at Siliguri. In the circumstances, she could not prepare the appeal till 18.01.2023. The draft appeal was sent to the Applicant on 21.01.2023 for approval which was received and

forwarded to her on 23.01.2023. Ultimately the appeal was filed on 24.01.2023.

3. The application is further supported by affidavits dated 28.07.2023 and 18.04.2024. According to the learned Deputy Solicitor General of India, paragraphs 4 and 5 of the affidavit dated 18.04.2024 summarises the reasons for the delay. Paragraphs 4 and 5 seek to explain the grounds for delay as narrated in the application in greater detail.

4. The respondents did not file any response to the Application or the two affidavits in support thereof. Therefore, the assertions made in the application and the two affidavits remain unassailed. Mr. Sudesh Joshi, learned counsel for the respondents, sought to contest the application for condonation of delay on the ground that the Applicant fails to explain the delay on a day to day basis. Although, the application seeks to cover up the delay on the personal medical grounds of the counsel, the records do not fully support this contention. It is also submitted that Section 5 of the Limitation Act, 1963 would not be applicable as Section 378(5) Cr.P.C. provides a timeline to prefer leave to appeal. It is submitted that sub-clause (5) provides that no application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by this Court after the expiry of six months only where the complainant is a public servant and since in this case the applicant is the Union of India and not the Drug Inspector only sixty days is provided for filing the appeal as per the second part of sub-clause 5. In support of his contention, Division Bench judgments of

the Delhi High Court and Punjab and Haryana High Court, i.e., ***Municipal Corporation of Delhi vs. Ramesh Chand***¹ and ***Haryana State Board for Prevention and Control of Water Pollution vs. M/s Jai Bharat Woolen Finishing Works, Panipat and Others***², were relied upon.

5. In response, the learned Deputy Solicitor General of India relied upon a Single Bench judgment of the Karnataka High Court in ***Serdia Pharmaceuticals (India) Private Limited, Mumbai vs. Union of India, Bangaluru***³.

6. The application under Section 5 of the Limitation Act, 1963, the application under Section 378(3) Cr.P.C. for grant of leave to appeal to challenge the impugned judgment and the appeal under Section 378(2) Cr.P.C. have all been filed by the Union of India represented by Mr. Bikramaditya Chowdhury, Drug Inspector, CDSCO. It is to be noticed that the Applicant has sought "leave" to appeal under Section 378(3) Cr.P.C. instead of "special leave" to appeal under Section 378(5) Cr.P.C. However, in the application under Section 5 of the Limitation Act, 1963, while computing the period of limitation, the Applicant has sought condonation of delay of 54 days computed under Section 378(5).

7. Section 378 Cr.P.C. for convenience is extracted hereinbelow:-

¹ 1987 SCC OnLine Del 391

² 1991 SCC OnLine P&H 1046

³ AIRONLINE 2021 KAR 308

“378. Appeal in case of acquittal.— (1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5),—

- (a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognisable and non-bailable offence;
- (b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may subject to the provisions of sub-Section (3), also direct the Public Prosecutor to present an appeal—

- (a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognisable and non-bailable offence;
- (b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.

(3) No appeal to the High Court under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).”

8. We are of the view that the issue sought to be raised by the learned counsel for the respondents is no longer *res integra* and it has been well settled by the Supreme Court. In **State (Delhi Administration) vs. Dharampal⁴**, a complaint was filed under

⁴ (2001) 10 SCC 372

Section 20 of the Prevention of Food Adulteration Act against the respondent. The respondent who was convicted after a trial and sentenced, filed an appeal. The Sessions Judge acquitted the respondent. Against this acquittal, the State (Delhi Administration) filed an appeal to the High Court of Delhi. The High Court dismissed the appeals on two grounds, one of them being that the appeals were barred by limitation as they were not filed within a period of sixty days. The Supreme Court examined this ground in the appeals against the Delhi High Court's judgment and held the contention to be untenable. The submission made before the High Court was that the appeal had not been filed by a public servant and therefore the limitation for filing such an appeal was sixty days. Before the Supreme Court, it was submitted by a counsel that the appeals should have been filed within ninety days from the date of the order as provided in Article 114 of the Limitation Act, 1963. The Supreme Court examined Section 417 as it stood in the Criminal Procedure Code, 1898 as well as Section 378 of the Code of Criminal Procedure, 1973. On such examination, it was held:-

"19. The second question had only been urged before the High Court. The submission made before the High Court was that the appeal had not been filed by a public servant and therefore the limitation for filing such an appeal was 60 days. This submission found favour with the High Court. In all fairness, to counsel appearing for the respondents before us, it must be stated that such a contention was not canvassed before this Court, as it is clearly an untenable contention. Before us it was submitted by Mr Lalit, that the appeals should have been filed within 90 days from the date of the order as provided in Article 114 of the Limitation Act.

.....

25. A comparison of Section 378 with the old Section 417 shows that whilst under the old section no application for leave to appeal had to be made by the State Government or the Central Government, now by virtue of Section 378(3) the State Government or the Central Government have to obtain leave of the High Court before their appeal could be entertained. Sub-

section (4) of Section 378 is identical to sub-section (3) of Section 417. Thus a complainant desirous of filing an appeal against acquittal must still obtain special leave. Thus, Section 378 makes a distinction between an appeal filed by the State Government or the Central Government, who only need to obtain "leave", and an appeal by a complainant who needs to obtain "special leave". The limitation provided in sub-section (5) is only in respect of applications under sub-section (4) i.e. application for special leave to appeal by a complainant. A complainant may be either a public servant or a private party. If the complainant is a public servant then the period of limitation for an application for special leave is 6 months. If the complainant is a private party then the period of limitation for an application for special leave is 60 days. The periods of 6 months and/or 60 days do not apply to appeals by the State Government [under sub-section (1)] or the Central Government [under sub-section (2)]. Appeals by the State Government or the Central Government continue to be governed by Article 114(a) of the Limitation Act. In other words, those appeals must be filed within 90 days from the date of the order appealed from. Needless to state, if there is a delay in filing an appeal by the State Government or Central Government it would be open to them to file an application under Section 5 of the Limitation Act for condonation of such delay. That period can be extended if the court is satisfied that there was sufficient cause for not preferring the appeal within the period of 90 days. The High Court was thus wrong in concluding that the appeals had to be filed within 60 days as provided in Section 378(5).

26. It must also be noted that sub-section (6) of Section 378 is identical to sub-section (5) of Section 417. Thus under Section 378 also the State Government cannot maintain an appeal if special leave to appeal is refused to the complainant. In this behalf there is no change. Section 417(1) specifically provided that it was "subject to the provisions of sub-section (5)". Section 378(1) similarly provides that it is "subject to sub-sections (3) and (5)". Sub-section (3) is the newly added provision which now provides that an appeal by the State or Central Government cannot be entertained without leave of the High Court. However the reference to sub-section (5) in sub-section (1) is clearly an inadvertent mistake. As pointed out above sub-section (5) of Section 378 applies only to application for special leave by a complainant. Sub-section (5) of Section 378 has no application to an appeal by the State Government or to an application for leave under sub-section (3). What the legislature clearly intended was to continue to provide that an appeal by the State Government would not be maintainable if special leave to appeal had been refused to a complainant. Thus sub-section (1) of Section 378 was to be subject to provisions of sub-section (6) and not sub-section (5) as inadvertently provided therein. Inadvertently the figure (5) in Section 417(1) was continued, without noticing that now under Section 378 the relevant provision was sub-section (6). In our view it is clear that the figure (5) in Section 378(1) is inadvertently retained. Thus in Section 378(1) the figure (6) will have to be read in place of the figure (5)."

emphasis supplied

9. In ***Mohd. Abaad Ali vs. Directorate of Revenue Prosecution Intellegence***⁵, the Supreme Court held that there is no exclusionary

⁵ 2024 SCC OnLine SC 162

provision under Section 378 Cr.P.C. or at any other place in the Code. The benefit of Section 5 read with Sections 2 and 3 of the Limitation Act, 1963 can therefore be availed of in an appeal against acquittal. There is no force in the contentions raised by the appellants as regards non-application of Section 5 of the Limitation Act, 1963. Thus, the contention raised by Mr. Sudesh Joshi of the non-application of Section 5 of the Limitation Act, 1963 in view of the timeline provided in Section 378(5) Cr.P.C. is negated.

10. In view of the pronouncement of the Supreme Court in ***Dharampal*** (supra), we are of the considered view that the period of six months and/or sixty days do not apply to appeals by the State Government [under sub-section (1)] or the Central Government [under sub-section (2)]. Appeals by the State Government or the Central Government continue to be governed by Article 114(a) of the Limitation Act, 1963. In other words those appeals must be filed within ninety days from the date of the order appealed from. If there is a delay in filing an appeal by the State Government or the Central Government, it would be open to them to file an application under Section 5 of the Limitation Act, 1963 for condonation of such delay and the period can be extended if the Court is satisfied there was sufficient cause for not preferring the appeal within a period of ninety days. We are, thus, also of the view that the Applicant while preferring an application for condonation of delay incorrectly sought condonation of delay of 54 days considering that they were required to file the appeal within a period of six months as per Section 378(5) Cr.P.C. Equally, the contention of the learned counsel for the

respondents that the appeal had to be filed within sixty days as provided in Section 378(5) was also incorrect.

11. As Article 114 (a) of the Limitation Act, 1963 provides a period of limitation of ninety days from the date of the order appealed from for preferring an appeal from an order of acquittal, let us examine whether the application and the two affidavits in support thereof filed by the Applicant explains the delay to the satisfaction of this Court and provides sufficient cause as required.

12. As per the explanation given by the Applicant, the period of delay initially is attributed to the failure of the conducting counsel to inform the Applicant about the impugned judgment till 21.06.2022. The explanation given thereafter explains the delay in the process of seeking permissions, necessary directions and approvals from the higher authorities which seems usual practice in all cases where the Government is a litigant. In spite of various judgments and directions given by the Constitutional Courts the process of seeking permissions, directions and approvals remains as cumbersome and time consuming. Substantial part of the delay is explained however, on the personal grounds of the Deputy Solicitor General of India with supporting medical papers. The application and the two affidavits have substantially explained the delay with supportive documents giving us an impression that what they state in the application is true. It is well-settled that while considering an application for condonation of delay beyond the period of limitation, the applicant has to explain the Court as to what was the "sufficient cause", which means an adequate and enough reason which

prevented him to approach the Court within limitation. In a case where a party is found to be negligent or for want of bona fide on his part, or found to have not acted diligently or remain inactive, there cannot be a justified ground to condone the delay. These reasons for rejecting the application for condonation of delay are not available in the present case. On a pragmatic and justice oriented approach rather than the technical detection of sufficient cause for explaining every days delay, we are of the considered view that the Applicant has been able to show sufficient cause to condone the delay.

13. The application is allowed and disposed of, accordingly.

(Bhaskar Raj Pradhan)
Judge

(Meenakshi Madan Rai)
Judge

Approved for reporting : Yes/~~No~~
Internet : Yes/~~No~~
(bp)