

(2003) 11 JH CK 0020

Jharkhand High Court

Case No: Criminal Appeal No. 1477 of 2003

Sona Ram

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: Nov. 25, 2003

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 384

Citation: (2004) 1 JCJR 78 : (2004) CriLJ 1925 : (2004) AIR Jhar HCR 1095 : (2004) 3 RecCriR 217 : (2004) 2 CurCriR 374 : (2004) 3 RCR(Criminal) 217

Hon'ble Judges: S.J. Mukhopadhyaya, J; Lakshman Oraon, J

Bench: Division Bench

Advocate: Ravi Prakash, G.C. Sahu and Rajen Raj, for the Appellant; Assistant Public Prosecutor, for the Respondent

Judgement

1. This jail appeal has been preferred by appellant, Sona Ram after about six years and four months against the judgment dated 16/17th October, 1996 passed by the learned 2nd Additional Sessions Judge, Jamshedpur. The appellant is in custody since 28th October, 1992 i.e. about 11 years.;

The appeal was placed under the heading "FOR ORDERS" for condonation of delay but no sufficient cause has been shown for not preferring the appeal in time.

2. One of the questions arises in this case is :

"Whether a party instituting an appeal in the Court after the prescribed period of limitation should file an application/or explain sufficient cause for not preferring the appeal within the period of limitation to condone the delay or not."

Apart from Mr. Ravi Prakash (AC), other counsel, namely, Mr. G. C. Sahu, Mr. Rajen Raj and others also assisted the Court. It was submitted that the Court has inherent jurisdiction to condone the delay. Even if no application is preferred, the Court should condone the delay to determine the appeal on merit instead of dismissing, it

summarily. Reliance was placed on the decision of the Supreme Court in the case of Dagadu Vs. State of Maharashtra, and Kishan Singh v. State of U. P., reported in 1996 SCC (Cri) 1010.

3. The issue in question fell for consideration directly or indirectly before different Courts time to time. In the case of Murugappa Naicker Vs. Thavammal, the appeal was admitted out of time. The preliminary objection raised after one year of admission was not allowed by the Court on the ground that a Court should not allow people to wait upon their rights after the party incurs expenses.

In the case of Mt. Kulsoomun Nissa and Another Vs. Noor Mohammad alias Sultan Haider and Another, a Bench of Allahabad High Court observed that the lower Court should have allowed the appellant to get round the technical objection of the absence of a formal application for extension of time.

In a similar matter in the case of Mosmat Ram Kali Kuer and Others Vs. Indradeo Choudhary and Another, a single Judge of Patna High Court noticed that the appeal was presented out of time and was admitted by the Court. The Court held that the respondents cannot be allowed to raise preliminary objection to the appeal on the ground of limitation when the case is taken up on merit. The Court being further satisfied from the facts that the plaintiffs had made all efforts within their command to approach the Court in time held that there was no negligence on the part of the plaintiffs in presenting the appeal.

The Gujarat High Court in the case of Markland Pvt. Ltd. and Others Vs. State of Gujarat, noticed that Section 5 of the Limitation Act, only requires the appellant or the applicant to satisfy the Court that he had a sufficient cause for not preferring the appeal or the application within such period. The section does not require that there should be a written application for condonation of delay.

In the case of The State of Rajasthan Vs. Ram Nath Nirottamdas Chaturvedi, the Supreme Court condoned the delay of two days of filing of appeal and remanded the case to the High Court for hearing on fact.

But in the case of Hukam Raj Khinvsara Vs. Union of India and others, the Supreme Court refused to interfere with the Tribunal's order on the ground that no case was made out by the appellant that he made an application for condonation of delay and the Tribunal had rejected the application without examining the grounds for delay.

So far as criminal appeals are concerned, where major punishment is inflicted, such as conviction u/s 302 of I.P.C., consistent view of Supreme Court is that the Court should consider the appeal on merit instead of dismissing it summarily. In the case of Dagadu Vs. State of Maharashtra, the Supreme Court held that although u/s 384 of Cr. P.C. the High Court has the power to summarily dismiss a first appeal against conviction of an accused yet in very serious cases like those u/s 302 of the I.P.C. or other cases where death or life imprisonment can be awarded, the High Court

should consider the appeal on merits instead of dismissing it summarily.

The Supreme Court further held that even if the High Court chooses to dismiss the appeal summarily, some brief reasons should be given so as to enable the Supreme Court to judge whether or not the case requires any further examination.

4. From the aforesaid decisions, one can come to the following conclusion :

- (i) In very serious cases like those u/s 302 of the I.P.C. or other cases where death or life imprisonment can be awarded, the High Court should consider the appeal on merits instead of dismissing it summarily;
- (ii) For good reason, the High Court has power to dismiss an appeal summarily u/s 384 of the Cr. P.C. but even in such cases, some brief reasons should be given so as to enable the Supreme Court to judge whether or not the case requires any further examination;
- (iii) For condonation of delay, no separate petition requires to be filed u/s 5 of the Limitation Act, 1936;
- (iv) But for condonation of delay, the appellant or the applicant is to satisfy the Court that he had sufficient cause for not preferring the appeal or making the application within the period of limitation;
- (v) Only in a suo motu proceeding, such as revision cases, no cause is required to be shown, there being no applicant;

AND

- (vi) An appellant or applicant in person can orally satisfy the Court that he had sufficient cause for not preferring the appeal or making the application within the period of limitation and may orally pray to condone the delay.

5. In a jail appeal u/s 383 of the Cr. P.C., there being no Advocate on record for the appellant, the Court normally appoints an Amicus Curiae to decide the appeal on merit. As the appellant is in jail, he cannot orally satisfy the Court that he had sufficient cause for not preferring the appeal within the period of limitation till the appellant is produced before the Court. The Advocate appointed as Amicus Curiae being not a counsel for the appellant on records; he cannot orally satisfy the Court that the appellant had sufficient cause for not preferring the appeal within the period of limitation.

In the aforesaid background, even in an appeal u/s 383 of the Cr. P.C. (Jail Appeal), the appellant is required to give sufficient cause for not preferring the appeal within the period of limitation, if there is a delay.

Generally, the High Court should consider the appeal on merit instead of dismissing it summarily. In this background, if there is delay in filing the appeal, it is desirable for a Court to give an opportunity to the appellant to explain the cause for delay in

preferring the appeal instead of dismissing the case summarily, at first instance.

In the circumstances, in a case of jail appeal u/s 383 of the Cr. P.C., if there is delay and no sufficient cause has been explained by the appellant in his petition for not preferring the jail appeal in time, the Court should give one opportunity to the appellant to explain the cause for delay. Either the appellant should be asked to be produced before the Court to explain the cause for not preferring the appeal in time or the Jail Superintendent should be asked to obtain the grounds from appellant and to inform the Court,

6. In the present case, as the delay is much more than six years, the appellant has already undergone sentences for about 11 years but no cause has been shown for not preferring the appeal within the period of limitation, let notice be issued to the Jail Superintendent, Special Central Jail, Bhagalpur to obtain an application from the appellant showing the cause for not preferring the appeal within the period of limitation. The Office is directed to take step immediately.

Place this case "FOR ORDERS" in the third week of January, 2004.