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**(1981) 06 CAL CK 0023**

**Calcutta High Court**

**Case No:** None

S.K. Basak and Others

APPELLANT

Vs

D.K. Bhattacharya and Another

RESPONDENT

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**Date of Decision:** June 24, 1981

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 468, 473

**Citation:** (1982) CriLJ 210 : 85 CWN 1017

**Hon'ble Judges:** S.N. Sanyal, J; Monoj Kumar Mukherjee, J

**Bench:** Division Bench

**Advocate:** C.R. Das, Miss Pronoti Banerjee, for the Appellant; Anilananda Mukherjee for State, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

1. For failure to pay the contributions (Employees" as well as employers" share) and for failure to pay the administrative charges, a Provident Fund Inspector has filed 30 separate complaints for 30 different months against M/s. Crown Rubber Industries (P) Ltd., of which the three petitioners before us are the Directors. Along with the complaints the complainant filed applications under s. 473 of the Code of Criminal Procedure for condoning the delay in preferring those 30 complaints within the prescribed period of limitation. The learned Metropolitan Magistrate, 5th Court, Calcutta, allowed the applications under S. 473 of the Code of Criminal Procedure, took cognisance upon the said complaints and issued process against the petitioners and the Company. Aggrieved by institution of the 30 cases the petitioners moved this Court and obtained these Rules. As a common point has been raised in support of these Rules they have been heard together and this judgment will dispose of all of them.

2. The point so urged is that the learned Magistrate was not justified in condoning the delay in filing the complaints as no sufficient ground was made out for such

condonation. To appreciate the contention of the petitioner it will be profitable to quote the explanation for the delay in filing the complaints, after statutory sanction for prosecuting the petitioner and the Company was obtained. It may be stated here that it is the common ground that the complaints were to be filed immediately on receipt of the sanction to save the bar of limitation under S. 468 of the Code of Criminal Procedure, 1973. The explanation appears in paragraph 3 of the petitions which were filed in each of the 30 cases and the said paragraph reads as follows : -

That the Provident Fund Inspector submitted his report before the Regional Provident Fund Commissioner (West Bengal) for his sanction for prosecution of the accused persons. Regional Provident Fund Commissioner went through the said report, became satisfied and accorded sanction on 2.5.78 for the prosecution of the said accused persons. Thereafter lawyer was engaged and on the latter's queries about some more facts, some more time was required. Subsequently lawyer took some time to prepare the complaint after going through various aspects of the case and inspecting the records thereof. As such the matter was delayed for which the prosecution could not file the complaint in time.

3. In our view, the learned Magistrate was not justified in treating the above explanations sufficient for condoning the delay. The complaints were filed more than one year after the sanction was obtained; except in two cases where the complaints were filed eight months after. It is preposterous to contend, as contended by the complainant, that a year's time was required to engage a lawyer or to furnish facts to him on his queries. The other contention that the lawyer took some time to prepare the complaints after going through the various records of the case and inspecting the records thereof is, to say the least, absolutely untenable as the records show that the complaints were all printed or cyclostyled and only the respective months for which the contributions were not paid, were written in hand. We are, therefore, of the view that the grounds for condoning the delay were wholly unsatisfactory and the learned Magistrate was not justified in entertaining the said grounds.

4. It was, however, contended by Mr. Mukherjee appearing for the complainant that the learned Magistrate was justified in condoning the delay in the interest of justice. The provision of limitation has been enacted in the Code of 1973 with the obvious purpose of preventing abuse of the process of the Court by filing belated and stale prosecutions. Such salutary purpose should not be allowed to be circumvented by taking recourse to the magic words "interest of justice" unless there is manifestation of compelling and justifiable reasons, in the complaints and in the orders taking cognisance, to do so. In the instant cases there is none.

5. Though the instant applications have been filed by three of the accused persons and not by all, still then the left out accused is also entitled to have the benefit of this order as the applications succeed not on the merits of the case of the individual accused, but on the merits of the case as a whole.

In view of the above discussions, the applications succeed and the Rules are made absolute. The impugned proceedings are hereby quashed.

S.N. Sanyal, J.

6. I agree.