(1974) 03 CAL CK 0036

Calcutta High Court

Case No: Criminal Misc. Case No''s. 704, 705 and 706 of 1973

Asim Kumar Roy, Chief Enforcement Officer		APPELLANT
	Vs	
Shree Bajrang Electric Steel Co. Pvt. Ltd.		RESPONDENT

Date of Decision: March 5, 1974

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 417(1), 417(3)
- Emergency Risks (Factories) Insurance Act, 1962 - Section 5(4)
- Limitation Act, 1963 - Section 10, 11, 12, 13, 14

Citation: (1976) 1 ILR (Cal) 259

Hon'ble Judges: A.K. De, J

Bench: Single Bench

Advocate: Balai Chandra Roy, for the Appellant;Mukul Gopal Mukherjee and C.M. Bhattacharjee and N.R. Biswas, for State, for the Respondent

Judgement

A.K. De, J.

Complainant, the Chief Enforcement Officer, Emergency Risk Insurance Scheme, Department of Revenue and Insurance, Government of India, in Complaint Case No. 282 of 1970 is the Petitioner in Criminal Revision Case No. 704 of 1973. By the order dated December 29, 1972, the learned Magistrate has acquitted the opposite parties (who are the Directors and the Company) in this case who were being prosecuted u/s 5(4) of the Emergency Risks (Factories) Insurance Act, 1962. The complainant has filed an application u/s 417(3) of the Code of Criminal Procedure, to be hereafter called the Code, on May 16, 1973 and has simultaneously filed a petition u/s 5 of the Indian Limitation Act for condoning the delay of 76 days in filing that. This Rule has been issued on his application u/s 5 of the Indian Limitation Act.

2. The State and the opposite parties have appeared to oppose.

3. No application under Sub-section (3) of Section 417 of the Code for the grant of special leave to appeal from an order of acquittal shall be entertained after expiry of 60 days from the date of order of acquittal. To be within time this application u/s 417(3) is to have been filed on or before March 31, 1973, adding to that the period that may have been taken in getting the certified copy of the order provided the application for the copy has been filed before March 31, 1973. The application for copy of the judgment of acquittal in this case was filed on April 18, 1973. The said copy was taken delivery of by the complainant on the same date. He is not, therefore, entitled to make any addition to the period of 60 days for the reason that the application for copy was not filed before March 31, 1973. Delay for the period from March 31, 1973, to April 18, 1973 and for the period between April 18, 1973 and May 16, 1973, requires to be explained. The first of the two periods is sought to be explained submitting that the complainant asked his Advocate in the trial Court in February 1973 to apply for the copy, was informed by him that he had made such application and in spite of his repeated enquiries from him between February and April, 1973 did not get the copy before April 18, 1973. The complainant came to know of the order of acquittal on December 29, 1972, when it was pronounced. Sri S.K. Basak, who was looking after the complainant''s case in the Magistrate''s Court obtained an unauthorised copy of the judgment. The Chief Enforcement Officer of the Department mentioned that fact in his letter dated February 3, 1973, to the Deputy Director. It further appears that the complainant made over a sum of Rs. 20 as expenses for the copy to his Advocate who endorsed receipt of it on February 20, 1973. Sri S.K. Basak certified in the bill of the learned Advocate that he was entitled to his fees at half rates for the date of judgment, that is December 29, 1972, thereby proving that the Advocate was present when the judgment was delivered. It further appears that no application for copy was filed till April 18, 1973. If copy, was not applied for by the complainant''s Advocate in spite of the complainant providing him with the fund, it is to be considered whether that delay on the part of the Advocate will be a ''sufficient cause'' within the meaning of the expression in Section 5 of the Indian Limitation Act, 1963, preventing the Petitioner from coming to Court in time. It was contended that this was a lapse on the part of the Advocate and was a ''sufficient cause''. I am unable to accept this submission. On February 6, 1973, (annex. B) the complainant''s Advocate stated that the copy had been applied for. He asked for funds. He received the same on February 20, 1973. In annex. R of March 19, 1973, the Advocate stated that the copies were not ready and that attempts were being made to get the same as early as possible. The complainant was requesting the Advocate from time to time for the copy. In spite of that, the lawyer, it appears, did not apply for the copy till April 18, 1973. Either he was forgetful or was not prompt in looking after the interest of his client. I am unable to say that this lapse on the part of his Advocate can be availed of by the Petitioner to say that he was prevented by ''sufficient cause'' from coming to Court in time. The complainant has not been able to explain the period from March 31, 1973, to April 18, 1973, or the period from February 6, 1973, to April 18, 1973.

4. As for the other period from April 18, 1973, to May 16, 1973, it appears that the Advocate of the complainant opined in February 1973 that an appeal against the order should be filed. Having got that opinion from the learned Advocate, the complainant should have taken steps earlier to decide whether it would be an appeal by the complainant with special leave u/s 417(3) or an appeal by the State on his behalf u/s 417(1). I am not satisfied that the complainant is entitled in explanation of his delay to avail himself of any period between the date when the copy of the judgment was made over to him and the date when the final decision was made by the Department in May 1973. The time that had been spent after April 18, 1973, to decide as to whether he would move through the State or himself is not available to him. Sri S.K. Basak stated on February 5, 1973, that the Advocate had seen the unauthorised copy and had opined that an appeal should be filed within 90 days. To refer the matter to the authorities after April 13, 1973, at Delhi after April 18, 1973, for a decision as to whether an appeal should be filed or not should have been taken Ions; before and not after obtaining the copy of the judgment on April 18, 1973. This period has also not been explained. The Petitioner is not entitled to say that he was prevented by sufficient cause for not filing his application within time as his delay for the period between March 31, 1973 and April 18, 1973 and from April 18, 1973, to May 16, 1973, has not been explained.

5. It was submitted that the delay had occurred on account of wrong advice of the learned Advocate. I am unable to accept this contention. It is not a case of wrong advice by a lawyer. It is a case where the Advocate, in spite of being requested by the party, has not applied for the copy within time. We have seen that in this case the learned Advocate asked for funds stating that he had made application for copy and was informing the complainant in the month of March 1973 that the copy was being made ready. If he had not made the application in time, the complainant could not avail himself of his lapse to say that that was a sufficient cause preventing him from going to Court in time. If the Petitioner had been diligent and if he had made enquiries in the Court, when in spite of repeated request to the learned Advocate he was not getting the copy even after the lapse of 90 days, he would have discovered that the copy had not been applied for. This want of due care on the part of the complainant also stands in his way.

6. A bona fide mistake on the part of a lawyer but not the want of care and attention on his part may be ''sufficient cause''. A lawyer, who has been furnished with necessary costs and has been asked to apply for a copy, omits to do so, it amounts to negligence on his part and that is not a sufficient cause for extension of time. Carelessness on the part of a lawyer cannot be taken as sufficient cause u/s 5. The facts in this case make out that the Advocate had been careless, if not negligent, for he not only asked for fund for the copy, took the same under receipt and had omitted to apply for the copy. The Petitioner cannot ask for any extension of time for that.

7. The learned lawyer appearing for the State submitted that Section 5 of the Indian Limitation Act was not applicable to an application u/s 417(3) of the Code of Criminal Procedure. He relied on the case of Kaushalya Rani Vs. Gopal Singh, . The case was decided before the amendment of Section 29 of the Indian Limitation Act. Sub-section (1) of Section 29 of the Indian Limitation Act, as it stood before the amendment, is as follows:

Nothing in this Act shall affect or alter any period of limitation specially prescribed for any suit, appeal or application by any special and/or local law now or hereafter in force.

8. Sub-section (2) of Section 29, as it stands after amendment, is as follows:

Where any special or local law prescribes for any suit, appeal or application, a period of limitation different from the period prescribed by the schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as and to the extent to which they are not expressly excluded by such special law or local law.

9. Special period of limitation has been prescribed by Section 417(3) of the Code. The decision in Kaushalya Rani v. Gopal Singh (Supra) is, therefore, of no assistance to the State Advocate to support his contention. Sub-section (2) of Section 29 states that if the period of limitation prescribed by any such law is different from that prescribed by the schedule, then only that sub-section will have application. No period of limitation is prescribed in the schedule to the Limitation Act for an application u/s 417(3). Section 29(2) will apply even to a case where a difference between a special law and schedule to the Limitation Act arises by omission to provide for a limitation to a particular proceeding under the Limitation Act. That omission will not make Section 29(2) inapplicable as has been held in the case of Bhakti Bh. Mondal Vs. Khagendra K. Bandopadhya and Others, . This contention of the State Advocate is rejected.

10. In the premises, I discharge the Rule. In view of the decision in this case the other Rules, i.e. Cr. Rev. Cases Nos. 705 and 706 of 1973 issued on the prayer of this Petitioner on the same facts are also discharged.