

Criminal Appeal No.230 of 2023

CNR – WBCS01-001224-2023

Present: Sri Soumendra Nath Das,

Chief Judge,

City Sessions Court, Calcutta,

JO Code No.WB01132.

Order No.05 dated 26.04.2024

Today is fixed for hearing of the petition u/s. 5 of the Limitation Act, 1963.

Ld. Advocate for the appellants is present by filing hazira.

Ld. Advocate for the respondent is present by filing hazira.

Now, the petition filed u/s 5 of the Limitation Act, 1963 is taken up for hearing in presence of the parties.

Ld. Advocate for the appellant submits that the impugned order was passed by the Ld. Court below on 18.10.2023 in connection with MISCN Case No. 04 of 2022 and thereafter the appellant applied for the free copy of the impugned order on the same date and after obtaining the same, the appellant filed the instant appeal on 22.12.2023, however in the process there was a delay of more or less 35 days in filing the instant appeal.

Ld. Advocate for the appellant further submits that after passing of the impugned order and thereafter since 20th October, 2023 the appellant no.2 was admitted in the Hospital at the Institute of Neurosciences in Kolkata for his serious illness and the appellant no.3 was also suffering from serious Chest Trauma since long and the appellant no.1 i.e. the son of appellant nos.2 and 3 was engaged in looking after his parents and as such unintentional delay was caused in filing the instant appeal before this Court. So, he prays for condonation of the delay.

In support of his contention Ld. Advocate for the appellants submitted the photocopy of the medical papers along with the medical certificate and prays for condonation of the unintentional delay caused in filing the appeal.

In reply the Ld. Advocate for the respondent raises objection against the application filed u/s. 5 of the Limitation Act and submits that technical mistake had occurred in filing the application u/s. 5 of the Limitation Act and if the delay is computed correctly then 65 days delay has occurred in filing the appeal.

Ld. Advocate for the respondent further submits that the free copy of the judgement and order dated 18.10.2023 was handed over to the respondent/complainant on the very first day by the Ld. Court below and if the complainant/respondent had obtained the free copy of the judgement and order dated 18.10.2023 on the very first day, then the accused persons/appellants obviously should have taken steps immediately, but in respect of condoning the delay the appellants are taking ground that they had applied for the certified copy of the judgement and order dated 18.10.2023 and the application was made after expiry of the statutory period of 30 days of filing of the instant appeal. Accordingly, he prays for rejection of the application u/s. 5 of the Limitation Act filed by the appellants as the application is based upon untrue facts.

Heard both sides.

Perused the record and the impugned order dated 18.10.2023 passed by the Ld. Metropolitan Magistrate, 3rd Court, Calcutta in connection with MISCN Case No. 04 of 2022 and the statutory period for filing the appeal is one month, but the appellant has filed the instant appeal on 22.12.2023 after a delay of 35 days.

However, on perusal of the medical papers and medical certificate I find that the appellant nos.2 and 3 were ailing at the relevant point of time and as such the appellant no.1 was looking after appellant nos.2 and 3 and therefore could not file the instant appeal within the stipulated period.

Law enjoins that the appeal, or for that matter, any case should be disposed of on merit rather than rejecting the same on mere technical grounds. A petition u/s 5 of the Limitation Act should be construed liberally if proper explanations are given and it does not smack of mala fides or it is not put forth as part of a dilatory strategy then in that event the appellant should be given an opportunity to make his submission in support of the appeal on merit.

I refer to the judgement of the **Hon'ble Apex Court** in the case of **Collector, Land Acquisition, Anantnag v. Mst. Katiji** reported in **AIR 1987 SC 1353** wherein the Hon'ble Apex Court has held that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

The Hon'ble Apex Court further observed in its judgment that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

In the aforesaid circumstances and upon consideration of the submissions of both the parties and upon perusal of the pleadings showing sufficient cause of delay the instant petition u/s 5 of the Limitation Act is required to be allowed in the interest of justice.

Hence, it is

ordered

That the instant petition u/s. 5 of the Limitation Act, 1963 be considered and allowed on contest but with a cost of Rs.**2000/-** to be paid to the District Legal Services Authority, Kolkata.

Delay in filing the appeal be condoned on payment of cost.

Fix **22.05.2024** for payment of cost.

Dictated & corrected by me

Chief Judge,
City Sessions Court, Calcutta.

Chief Judge,
City Sessions Court, Calcutta.

and if cost is paid in terms of the instant order then, the record will be taken up for hearing on the point of admission.

Criminal Appeal No.06 of 2022

CNR – WBCS01-000039-2022

Present: Sri Siddhartha Kanjilal,

Chief Judge,

City Sessions Court, Calcutta,

JO Code No.WB01057.

Order No.04 dated 31.03.2022

Today is fixed for payment of cost by the appellant/convict to the KMC and hearing on the point of admission.

Ld. Advocate for the appellant/convict is present by filing hazira. Ld. Advocate is also present on call.

Ld. Advocates for the respondent No.1/State and the respondent No.2/KMC are present by filing haziras. Ld. Advocates are also present on call.

Ld. Advocate for the respondent No.2/KMC submits that his client received the cost and he has filed a receipt to that effect.

As the cost is paid, let the record be taken up for hearing on the point of admission.

Ld. Advocate for the appellant/convict submits that the impugned judgment and order was passed on 15.11.2021 by the Ld. Senior Municipal Magistrate, Calcutta in connection with G.R Case No.30 of 2020 directing the appellant/convict to suffer simple imprisonment for three years and to pay fine of Rs.50,000/- in default to suffer S.I. for four months.

Ld. Advocate of the appellant/convict further submits that without perusing the documents and scanning the evidences, Ld. Magistrate has passed the impugned judgment and order and there is sufficient merit to proceed with the appeal and prays for admission of the same.

Heard the Ld. Advocate for the convict/appellant.

Perused the record and the impugned judgment and order dated 15.11.2021 in connection with G.R Case No.30 of 2020 passed by the Ld. Senior Municipal Magistrate, Calcutta where the Ld. Magistrate has convicted the appellant directing the appellant/convict to suffer simple imprisonment for three years and to pay fine of Rs.50,000/- in default to suffer S.I. for four months.

The grounds raised by the Ld. Advocate for the convict/appellant are required to be adjudicated in the appeal.

Thus, the Criminal Appeal is admitted.

Call for LCR.

At this stage, Ld. Advocate for the appellant/convict submits that two petitions i.e. to allow the appellant/convict to remain on the same bail bond filed before the Court of Ld. Magistrate and for stay of the operation of the impugned order & Judgement dated 15.11.2021 before the Court of Ld. Magistrate have been filed.

Heard the Ld. Advocate for the convict/appellant.

As the appeal has been admitted by this Court and if the proceeding of the Ld. Court below is not stayed then the appeal will be frustrated.

Contd(Order No.04 dated 31.03.2022)

Considering this, the operation of the impugned order passed by the Court Ld. Magistrate be stayed till next date.

The appellant/convict be allowed to remain on the same bail bond filed before the Ld. Court below till the next date.

To **02.05.2022** for hearing of the appeal.

Let a copy of this order be sent to the Ld. Senior Municipal Magistrate, Calcutta for information.

Dictated & corrected by me

Chief Judge,
City Sessions Court, Calcutta.

Chief Judge,
City Sessions Court, Calcutta.

Order No.04 dated 21.03.2022

Today is fixed for payment of cost and hearing on the point of admission.

Ld. Advocate for the appellant/convict is present by filing hazira. Ld. Advocate is also present on call.

Ld. Advocates for the OP No.1/State and the OP No.2/KMC are present by filing haziras. Ld. Advocates are also present on call.

Ld. Advocate for the OP No.2/KMC submits that his client received the cost and he has filed money receipt showing payment of cost.

As the cost is paid, let the record be taken up for hearing on the point of admission.

Ld. Advocate for the appellant/convict submits that the impugned judgment and order was passed on 24.09.2021 by the Ld. Municipal Magistrate, 2nd. Court, Calcutta in connection with M.F. Case No.1046 of 2017 directing the appellant/convict to suffer simple imprisonment for three years and to pay fine of Rs.50,000/- in default to undergo S.I. for six months.

Ld. Advocate of the appellant/convict further submits that without perusing the documents and scanning the evidences, Ld. Magistrate has passed the impugned judgment and order and there is sufficient merit to proceed with the appeal and prays for admission of the same.

Heard the Ld. Advocate for the convict/appellant.

Perused the record and the impugned judgment and order dated 24.09.2021 passed by the Ld. Municipal Magistrate, 2nd. Court, Calcutta in connection with M.F. Case No.1046 of 2017 where the Ld. Magistrate has convicted the appellant directing the appellant/convict to suffer simple imprisonment for three years and to pay fine of Rs.50,000/- in default to undergo S.I. for six months.

This Court finds there are sufficient materials to proceed with the appeal as the impugned judgment and order requires interference.

Thus, the Criminal Appeal is admitted.

Call for LCR.

At this stage, Ld. Advocate for the appellant/convict submits that two petitions i.e. to allow the appellant/convict to remain on the same bail bond filed before the Ld. Court below and for stay of the operation of the impugned order & judgment dated 24.09.2021 before the Ld. Court below.

Heard the Ld. Advocate for the convict/appellant.

As the appeal has been admitted by this Court and if the proceeding of the Ld. Court below is not stayed then the appeal will be frustrated.

Considering this, the operation of the impugned order & judgement passed by the Ld. Court below be stayed till next date.

The appellant/convict be allowed to remain on the same bail bond filed before the Ld. Court below till the next date.

As the respondent No.1 and 2 appeared and present before this Court and the case is otherwise ready, the matter be transferred to the Court of **Ld. Additional District & Sessions Judge, Bench-II, Calcutta** for hearing and disposal.

Contd

To **04.04.2022** for appearance before the Transferee Court i.e. **Ld. Additional District & Sessions Judge, Bench-II, Calcutta.**

Ld. Municipal Magistrate, 2nd Court, Calcutta is directed to send the LCR before the Transferee Court within 04.04.2022.

Let a copy of this order be sent to the Ld. Municipal Magistrate, 2nd Court, Calcutta, for information.

Dictated & corrected by me

Chief Judge,
City Sessions Court, Calcutta.

Chief Judge,
City Sessions Court, Calcutta.