

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Jail Appeal No.37 of 2019

Awdesh Chaudhary ....Appellant

Versus

State of Uttarakhand ...Respondent

Present: Mr. V.K. Gemini, D.A.G for the State of Uttarakhand.

Coram: Hon'ble Alok Singh, J.  
Hon'ble Ravindra Maithani, J.

Hon'ble Ravindra Maithani, J. (Oral)

1. Heard learned counsel for the parties.
2. Admit.
3. Summon the Lower Court Record.
4. This appeal has been preferred by a convict from jail and office has reported that it is delayed by 39 days. Delay is condoned.
5. Though, this Court has condoned the delay but why did delay occur? It has to be seen so that it may not occur in future.
6. In the instant case copy of judgment and order was received in the jail on 08.04.2019 but it was forwarded from the jail after three months on 08.07.2019. Why was the Delay?
7. This is year 2019. In late 1970's Hon'ble Supreme Court has issued various guidelines and directions in respect of personal liberty of a person.
8. In the case of M.H. Hoskot Vs. State of Maharashtra, 1978 AIR 1548, a delay condonation application was filed. In para no.2 of this judgment, the Court observed that the delay in seeking the leave from the Hon'ble Court doubly shocking

because it is inordinate and implicates the prison administration.

9. In para no. 24 of the judgment in M.H. Hoskot case (*supra*), the Hon'ble court observed as hereunder:-

“24. If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the Court under Art. 142 read with Arts. 21 and 39-A of the Constitution, power to assign counsel for such imprisoned individual 'for doing complete justice'. This is a necessary incident of the right of appeal conferred by the Code and allowed by Art. 136 of the Constitution. The inference is inevitable that this is a State's duty and not Government's charity. Equally affirmative is the implication that while legal services must be free to the beneficiary, the lawyer himself has to be reasonably remunerated for his services. Surely, the profession has a public commitment to the people but mere philanthropy of its members yields short mileage in the long run. Their services, especially when they are on behalf of the State, must be paid for. Naturally, the State concerned must pay a reasonable sum that the court may fix when assigning counsel to the prisoner. Of course, the court may judge the situation and consider from all angles whether it is necessary for the ends of justice to make available legal aid in the particular case. In every country where free legal services are given it is not done in all cases but only where public justice suffers otherwise. That discretion resides in the court.”

10. In para no. 26, Hon'ble court, issued the following directions:-

“26. While dismissing the Special Leave Petition we declare the legal position to put it beyond doubt:

1. Courts shall forthwith furnish a free transcript of the judgment when sentencing a person to prison term;

2. In the event of any such copy being sent to the jail authorities for delivery to the prisoner, by the appellate, revisional or other court, the official concerned shall, with quick despatch, get it delivered to the sentence and obtain written acknowledgment thereof from him.

3. Where the prisoner seeks to file an appeal or revision, every facility for exercise of that right shall be made available by the Jail Administration.

4. Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence or incommunicado situation, the Court shall, if the circumstances of the case, the gravity of the sentence, and the ends of justice so require, assign competent counsel for the prisoner's defence, provided the party does not object to that lawyers.

5. The State which prosecuted the prisoner and set in motion the process which deprived him of his liberty shall pay to assigned counsel such sum as the court may equitably fix.

6. These benign prescriptions operate by force of Art. 21 (strengthened by Art. 19 (1) (d) read with sub-art. (5)) from the lowest to the highest court where deprivation of life and personal liberty as in substantial peril."

11. A strong mechanism has been established by virtue of various judicial pronouncements of Hon'ble Supreme Court, including quarterly review of the prisoners; appointment of panel lawyers, obligations of District and Taluka State Legal Services Authorities etc., for providing necessary legal aid to prisoners; filing of an appeal against conviction in a matter. After all it is a matter of right and also relates to life and liberty of a prisoner. The impugned judgment and order was passed on 08.04.2019 by the Fast Track Court/Additional Sessions Judge/Special Judge POCSO, Haridwar.

12. Sessions Judge, Haridwar shall submit a report to this Court regarding the reasons for delay in filing this appeal. If required, he may seek a report from Superintendent of District Jail, Haridwar, where the convict is confined. The report may also incorporate the fact as to when the impugned judgment and order was transmitted to the Superintendent of District Jail, Haridwar for furnishing it to the convict? How many visits of the panel lawyers etc., were conducted during the period between the conviction and when the appeal was preferred? Who has monitored it? Who has committed the lapse?

13. Today, this Court has still condoned the delay. Why it is happening. It appears that those who are involved in this

mechanism of prison justice are not being held accountable. Time has come to fix the responsibility; to held measures to hold them accountable and if required to take measures to stop reoccurrence.

14. Sessions Judge Haridwar, shall submit his report within a period of three weeks from now.

15. List thereafter.

(Ravindra Maithani, J.) (Alok Singh, J.)  
18.07.2019

Shubham