

Form No.J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Mr. Justice Shib Sadhan Sadhu, J.

C.R.R. No.2811 of 2014

Mr.Sankar Chinna ... Petitioner

Versus

Tapan Krishna Saha ... Opposite Party

**For the Petitioner : Md. Sabir Ahmed
Md. Mujibar Ali Naskar**

**For the Opposite Party : Mr. Siddhartha Sankar Mondal
Mr.Abul Kalam**

Heard on : January 30, 2015.

Judgment on : February 2 , 2015

Shib Sadhan Sadhu, J.

1. By filing the instant Revisional Application the petitioner seeks to set aside/quash the impugned order being order No.4 dated 5th May, 2014 passed by the Learned Sessions Judge, Hooghly in Criminal Appeal No.51 of 2013 dismissing the application under Section 5 of the Limitation Act, 1963 and thereby also dismissing the said Criminal Appeal preferred by the present petitioner challenging the judgment and order of conviction passed on 31st

August, 2013 by the Learned Judicial Magistrate, 5th Court, Hooghly (Sadar) in connection with C.R.Case No. 71 of 2010 convicting the present petitioner and sentencing him to suffer Simple Imprisonment for six months.

2. Mr. Sabir Ahmed, Learned Advocate appearing on behalf of the petitioner, submitted that being aggrieved by and dissatisfied with the order of conviction and sentence, the petitioner preferred an appeal which was registered as Criminal Appeal No.51 of 2013. Since there was some delay in preferring the appeal, an application under Section 5 of the Limitation Act was also filed. The delay was explained and it was averred in the said petition that owing to illness, the appellant and his father were not in a position to attend Court for preparation of the appeal within time. He further submitted that to substantiate such delay on account of illness the appellant produced a Medical Certificate issued by the Doctor who treated him. But the Learned Sessions Judge did not accept such explanation for the delay only because the Medical Certificate was not corroborated by any medical prescription, and she therefore, rejected the application and passed the impugned order. He submitted yet further that the petitioner has been seriously prejudiced for such rejection order which has ultimately resulted in miscarriage of justice. According to him the petitioner has been gagged and his substantive right of preferring appeal against the

order of conviction and sentence has been denied to him by the impugned order. He submitted yet further that the Learned Sessions Judge, Hooghly, should have shown greater indulgence and flexibility in applying the law of limitation since it was a case of conviction and imposition of sentence. Thus he concluded by submitting that the impugned order is illegal and it is liable to be set aside. He relied on the decision of the Hon'ble Supreme Court in the case of Abdul Ghafoor & Another V. State of Bihar reported in (2012)1 C Cr.LR (SC) 57 in support of his submission.

3. Mr. Siddhartha Sankar Mandal Learned Advocate appearing on behalf of the O.P. opposed such submission made by his learned adversary and contended that this Court while exercising revisional jurisdiction should not interfere with the impugned order which has been passed correctly and after proper exercise of judicial discretion. He further contended that the present petitioner was absolutely negligent and he had shown no bona fide. Although the petitioner produced a Medical Certificate but it was not backed by any medical prescription to show that he had been actually suffering from the alleged ailment and he took what medicines. As such, the Learned Sessions Judge was quite justified in not relying upon such Medical Certificate and to infer that the explanation offered for the delay was not sufficient. He contended yet further that the ratio of the cited decision cannot be

applied to the instant case in view of the distinguishing features, specially on the face of laches and negligence shown by the petitioner. He, therefore, insisted upon dismissal of the instant Revisional Application.

4. Having regard to the rival submission and contention advanced by the Learned Advocates in the light of the decision placed, I would like to say that in exercising discretion under Section 5 of the Limitation Act, 1963, Court's approach should be pragmatic. I would like to mention further that the Revisional power of the High Court, is wide enough and must be exercised to further the ends of justice. In cases of serious miscarriage of justice, it possesses unfettered power to interfere.
5. After going through the cited decision I find that the Hon'ble Supreme Court was pleased to observe –

“.....5.The law of limitation is indeed an important law on the statute book. It is in furtherance of the sound public policy to put a quietus to disputes or grievances of which resolution and redressal are not sought within the prescribed time. The law of limitation is intended to allow things to finally settle down after a reasonable time and not to let everyone live in a state of uncertainty. It does not permit any one to raise claims that are very old and stale and does not allow anyone to approach the higher tiers of

the judicial system for correction of the lower Court's orders or for redressal of grievances at ones own sweet will. The law of limitation indeed must get due respect and observance by all Courts. We must, however, add that in cases of conviction and imposition of sentence of imprisonment, the Court must show far greater indulgence and flexibility in applying the law of limitation than in any other kind of case. A sentence of imprisonment relates to a person's right to personal liberty which is one of the most important rights available to an individual and, therefore, the Court should be very reluctant to shut out a consideration of the case on merits on grounds of limitation or any other similar technicality."

6. In the present case, the petitioner has been convicted and sentenced to suffer imprisonment. If the petitioner is shut up he might lose his substantive right and personal liberty. On the contrary, no prejudice will be caused to the O.P. if the delay is condoned and the matter is heard and decided on merits. Therefore, relying on the observation made by the Hon'ble Supreme Court in the case of Abdul Ghafoor V. State of Bihar (Supra), I am inclined to allow the Revisional Application.
7. For the aforesaid reason, this application is allowed. The impugned order being order No. 4 dated 05.05.2014 passed in Criminal Appeal

No.51 of 2013 is hereby set aside. Consequently the delay is condoned and the appeal being Criminal Appeal No.51 of 2013 be admitted.

8. Learned Sessions Judge, Hooghly is directed to hear and dispose of the appeal according to law as early as possible but not later than three months from the date of communication of this order.
9. In view of the facts and circumstances of the case, I am not inclined to pass any order as to costs.
10. Criminal Section is directed to deliver urgent photostat certified copy of this judgment to the parties, if applied for, as early as possible.

(Shib Sadhan Sadhu, J.)