

IN THE HIGH COURT OF JUDICATURE AT PATNA
GOVT. APPEAL (SJ) No.18 of 2019
Along with
Interlocutory Application No. 1 of 2019

Arising Out of PS. Case No.-31 Year-2014 Thana- ECONOMIC OFFENCES UNIT, BIHAR
District- Patna

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The Economic Offences Unit through the Superintendent of Police, EOU,
Patna, Bihar

... .. Appellant/s

Versus

Aruna Kumari, Female, aged about 32 years, Wife of Aditya Narayan
Resident of Village- Bara, P.S.- Guraru, District- Gaya.

... .. Respondent/s

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Appearance :

For the Appellant/s : Ms. Soni Shrivastava, Advocate
For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 23-01-2020

Interlocutory Application No. 1 of 2019

Heard learned counsel for the appellant.

2. Though the Interlocutory Application has been filed for condonation of delay of 98 days in filing of Government Appeal (SJ) No. 18 of 2019, learned counsel for the appellant has also been heard on merits of the main appeal itself.

3. The Court would deal first with the merit of the appeal and then take a view with regard to whether the matter justifies detailed consideration after condoning the delay in filing of the appeal.

4. The appeal has been filed against the judgment and



order of acquittal dated 25.02.2019 passed by the Special judge, Vigilance (Trap), Patna in Special Case No. 52 of 2014 arising out of Economic Offences Unit Case No. 31 of 2014 by which the opposite party has been acquitted of charges under Sections 7/13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988.

5. Learned counsel for the appellant submitted that though the acquittal has been on the basis of giving benefit of doubt to the opposite party, but the same is not justified on the basis of the evidence before the Court. It was submitted that pre-trap memo, post-trap memo, the evidence of the trap team, verifier and the amount of Rs. 10,000/- recovered from the possession of the opposite party were enough to convict her. It was submitted that the Court has wrongly taken an adverse view with regard to non-bringing on record the order constituting the trap team and the complainant/prosecutrix having turned hostile. It was submitted that the Investigating Officer has also proved the place of occurrence in his deposition. It was further submitted that upon the amount being recovered, fingers of the opposite party when put in the chemical solution which turned pink, which clearly indicated that the bribe money was accepted by her.



6. Having considered the aforesaid submissions of learned counsel for the appellant, the Court finds that the view taken by the Court below cannot be said to be unjustified or perverse.

7. In matters like the present, there is inbuilt protection given to the accused, that is, of the case against the accused being proved beyond reasonable doubt. This is based on the constitutional mandate. The prosecution has to bring home the charges and prove it to the level that the Court finds that such allegation has been proved to a point which would be acceptable to a prudent man. Stricter the law, the requirement of compliance with the procedure prescribed also are to be applied equally strictly while considering such cases. In the present case, the allegation of the opposite party having accepted a bribe, obviously visited her with serious penal consequences and, thus, clearly when a Court of law was called upon to adjudicate the matter arising out of such exercise, it had to be conscious of its responsibility to consider the matter objectively. Perusal of the judgment does not indicate that any issue has been left undiscussed. This objection has also not been raised by learned counsel for the appellant.

8. Coming to the issue of non-production of order



constituting the trap team, which is one of the grounds for giving benefit of doubt to the accused (respondent), in the considered opinion of the Court, carries weight. Persons in official capacity are said to have acted to trap a person demanding bribe for acting in official pending matters/proceeding before the officer. In the present case, the complaint was made by an *Anganbari Sevika*, that for closing a proceeding against her the accused was demanding a bribe for which complaint was made before the Economic Offences Unit.

9. The first and foremost requirement was to constitute a team to look into the matter. Upon such team being constituted, in accordance with law, by the Competent Authority, members of the team have the jurisdiction to proceed further in the matter of cross checking, preparing pre-trap memo followed by the exercise of actual trap and thereafter followed by a post-trap memo etc. When admittedly, before the Court there was no document to show that the trap team which had conducted the exercise was the team constituted by the Competent Authority to do so, the Court rightly has not gone on the self statement made by the concerned persons that they were members of such trap team. Where law presumes that there are orders on paper with regard to a certain fact, the



original or its copies, which are admissible under law, have to be produced before the Court and proved in the manner required in law and only upon the same being done, the Court is required to take cognizance and accept the same. In the present case, when no such document was ever produced before the Court, the doubt with regard to the constitution of a trap team and action of the members who had conducted the exercise becomes open to speculation.

10. Further, when the complainant herself during her cross-examination before the Court, has changed her version and the prosecution, had declared her to be hostile and thereafter proceeded to cross examine her, in which also statements contrary to the prosecution case have been made by the complainant, the authenticity and reliability of such witness clearly being doubtful, but necessarily, the benefit has to go to the accused. The Court having done that on this score also, cannot be faulted. Further, the prosecution during trial had produced some torn notes which were alleged to have been seized from the opposite party. The same being few in number, that too, in a torn condition, obviously raises serious doubts with regard to them being the notes which were sized from the possession of the opposite party. This by itself may be sufficient



to raise *bona fide* doubt with regard to the authenticity of the recovery made from the opposite party of the so called bribe money, especially when the independent witnesses of search and seizure were also not examined.

11. Thus, on the basis of a combined effect of the facts and circumstances discussed by the Court below, it coming to the conclusion that reasonable doubts have been created with regard to the prosecution story, for which, in law, the benefit has to accrue to the accused, this Court does not find any error in the same which would require interference.

12. In the aforesaid background, the Court has proceeded to consider the limitation petition.

13. Learned counsel for the appellant, on the basis of averments made in the Interlocutory Application, submitted that the application for obtaining certified copy of the judgment and order under appeal dated 25.02.2019 was made on 16.03.2019. The application for obtaining certified copy itself having been made after 18 days, the Court finds that right from the beginning, the approach of the appellant was casual in the matter. Thereafter, even upon the copy being provided to them on 04.04.2019, in the background that already 18 days had elapsed, still there being no urgency shown in the matter and



the ground taken that opinion was sought and file was handed over to learned counsel and sent to the Department for approval and thereafter summer vacation having intervened cannot improve the case of the appellant for condonation of delay for the reason that though the Court had re-opened on 17th June, 2019, still the appeal was filed on 07.08.2019. Thus, there is absolutely no justification for such inordinate delay. The Court cannot give benefit of doubt to the appellant of not being conscious of the fact that the appeal had to be filed within 90 days.

14. From the pleadings in the Interlocutory Application, the Court finds that learned counsel for the Department had sent the memo of appeal along with the limitation petition on 06.05.2019 itself to the Department. Thus, it is clear that even on 06.05.2019, when the matter was found fit for filing of appeal and the prepared memo of appeal as also the limitation petition was sent to the Department on 06.05.2019 and still the same being ultimately filed on 07.08.2019, in the considered opinion of the Court, cannot be casually condoned. There is absolutely no explanation for such delay.

15. In view of the discussions made hereinabove, the



Court finds that the delay in filing of the appeal is due to deliberate laches on the part of the appellant which does not persuade the Court to condone such limitation.

16. Accordingly, on the ground of limitation as well as on merits, both Interlocutory Application No. 1 of 2019 as also Government Appeal (SJ) No. 18 of 2019 stand dismissed.

(Ahsanuddin Amanullah, J)

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