IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CRIMINAL PROCEDURE

DATE OF DECISION: May 05, 2009

CRL. M.C. 364/2009 and Crl. M.A. 1378/2009 (stay)

MANOJ KUMAR ..... Appellant
Through: Mr. Jitendra Sarin, Advocate

versus

STATE ..... Respondent
Through: Mr. Manoj Ohri, APP for the State along with Investigating Officer ASI Dharambir Singh, P.S. Najaf Garh

REVA KHETRAPAL, J. (Oral)

1. This is a petition under Section 482 Cr.P.C. read with Article 227 of the Constitution of India praying for quashing of FIR No.478/98 under Sections 279/304-A IPC, Police Station Najafgarh, and the proceedings emanating therefrom in the case titled "State vs. Manoj" pending in the Court of the Metropolitan Magistrate, Dwarka Courts.

2. The facts leading to the registration of the aforesaid case was that on 18.08.1998 one Poonam, wife of Naresh, lodged a complaint with Police Station Najafgarh that her son aged one and a half years while playing outside the house had met with an accident with a tempo being driven by the petitioner with great speed and in a rash and negligent manner. The front left wheel of the tempo went over the head of her son, who died at the spot. After the completion of the investigation, challan was filed on 20th December, 2005, i.e., much beyond the period of limitation as provided under Section 468 Cr.P.C. The grievance of the petitioner is that the learned trial court by its order of the same date, i.e., 20th December, 2005 condoned the delay in the filing of the charge-sheet and took cognizance of the offence. The said order reads as under:-

"20.12.2005
Present: APP for the State

Accused not present.
SI Sanjay Verma No.D-3677, District Line R.K. Puram present.

Fresh challan received. It be checked and registered. Present case was registered in the year 1998 and since then S.I. Sanjay Verma has not filed the Challan and kept the same with him. From the conduct of S.I. Sanjay Verma prima-facie it transpires that SI Sanjay Verma had tried to help the accused by not filing the Challan within time. However, since the offence complained of against the accused is of serious nature delay in filing the Challan is condoned and cognizance of the offence is taken. Issue summon to the accused and notice to his surety for 23.2.2006.

Copy of this order be sent to Commissioner of Police, Delhi for information and necessary action against SI Sanjay Verma.

Sd/-
M.M., New Delhi
20.12.2005"

3. I have heard Mr. Jitendra Sarin, the learned counsel for the petitioner and Mr. Manoj Ohri, the learned Additional Public Prosecutor for the State. The learned counsel for the petitioner submits that the petitioner was not even afforded an opportunity of being heard while deciding the issue of delay, and that as per settled principles of law, it was incumbent upon the trial court to have afforded an opportunity to the petitioner before deciding the issue of limitation. Even otherwise, he further submits, the order passed by the learned trial court is a cryptic one and while condoning the delay of more than four years, the learned trial court merely observed that the delay was being condoned as the alleged offence was of a serious nature.

4. The learned counsel further submits that after being summoned by the trial court, the petitioner appeared before the trial court on 05.07.2006 and was admitted to bail and furnished with copies of the charge-sheet and other documents. Thereafter on 27.01.2007, the petitioner filed an application under Section 468(2)(c) Cr.P.C. wherein the petitioner apprised the Court about the fact that the petitioner was not afforded an opportunity of being heard while condoning the delay and that the proceedings should be held to be barred by limitation. The learned trial court instead of staying the criminal proceedings against the petitioner, as prayed by the petitioner, dismissed the application of the petitioner by order dated 24th October, 2008 holding that the same was not maintainable at this stage when cognizance of

offence had already been taken by the Court. Aggrieved by the aforesaid order, the petitioner filed the present petition.

5. In the course of arguments, the learned counsel for the petitioner to substantiate his contention that the learned trial court could not have condoned the delay in the filing of the charge-sheet and taken cognizance of the offence almost seven and a half years after the registration of the case and that too without hearing the petitioner, strongly relied upon a three Judge Bench decision of the Hon'ble Supreme Court rendered in State of Maharashtra vs. Sharadchandra Vinayak Dongre and Ors. (1994) Supp. 4 SCR 378. In the said case, the respondents had urged before the High Court that the learned Chief Judicial Magistrate could not have condoned the delay in launching the prosecution without notice to the respondents and permitting them to have their say. The High Court found that the Chief Judicial Magistrate had allowed the application for condonation of delay in filing the charge-sheet, without recording any reasons and without hearing the respondents and behind their back and proceeded to quash the order of the Chief Judicial Magistrate. Affirming the position of the High Court, the Supreme Court held that the High Court was perfectly justified in holding that the delay, if any, for launching the prosecution could not have been condoned without notice to the respondents and behind their back and without recording any reasons for the condonation of the delay. The Supreme Court, however, came to the conclusion that instead of quashing the proceedings including the issuance of notice, it would have been appropriate for the High Court, without going into the merits of the case to have remitted the case to the trial court, with a direction to decide the application for condonation of delay afresh after hearing both sides. The Supreme Court held that since the Chief Judicial Magistrate had condoned the delay for launching the prosecution, without notice to the respondents and without affording any opportunity to the respondents to have their say, the case deserved to be remitted to the Chief Judicial Magistrate for deciding the application filed by the prosecution seeking condonation of delay afresh in accordance with law after hearing both the parties.

6. Relying upon the judgment of the Supreme Court in Sharadchandra Vinayak Dongre (supra), a learned Single Judge of this Court in the case of Prashant Goel vs. State and Anr. reported in 134 (2006) DLT 221, upheld the contention of the petitioner therein that the delay could not have been condoned and cognizance taken of the offence without notice to the petitioner. In paragraph 3 of the judgment, the Learned Judge held:-

"3. I have considered the submissions of both Counsel. Irrespective of the provisions of Code of Criminal Procedure or any procedural law by which a particular proceedings are governed, it is fundamental principle that no orders can be passed against a party which affects his rights prejudicially, without notice to that party and giving him a hearing. This principle of `Audi Alteram Partem' which is one of the Principles of Natural Justice is applicable in all proceedings including those where administrative action is taken against a person. Such a principle is applicable with much more force when the proceedings are judicial in nature, as in the instant case. Fair hearing is the most fundamental principle of administration of justice. Although the law of evidence and the procedural laws ensure it and statutes also provide for it, the principles of natural justice, which include the essentials of a fair hearing are invoked wherever there are gaps in the statutory law. Therefore, it would be no answer to say that Criminal Procedure Code is silent on this aspect. The Supreme Court has read these principles of natural justice into the provisions of the Criminal Procedure Code in the case of Saheb Singh Vs. Haryana, (1990) 2 SCC 385. It was held that although a High Court was competent to enhance the sentence of the accused while exercising the power of suo moto revisional jurisdiction under Section 397 and 401 of Cr.P.C. even without an appeal having been preferred by the state, it could do so only after giving a notice and an opportunity of being heard to the accused. Then we have much celebrated judgment of Supreme Court in the case of A.R. Antulay Vs. R. S. Nayak, (1988) 2 SCC 602 which is an authority for the proposition that even a decision of the Supreme Court could be impugned on the ground that decision has been taken by the Court without affording to the accused an opportunity of being heard. The rules of natural justice are, therefore, important parameters of the fairness of the procedure. Obviously when the complaint is time barred, other side gets a valuable right inasmuch as time barred complaint cannot be considered on merits unless the delay is condoned. Therefore, accused shall have right to argue that in given circumstances delay be not condoned. Depriving the accused with such a valuable right and condoning the delay, would clearly be in violation of Principle of Natural Justice. It, therefore, would not make any difference whether the case originates on the lodging of the FIR as a State case and it is on the basis of complaint filed by the complainant. The principles on which judgment is given by the Supreme Court in the case of State of Maharashtra Vs. Sharadchandra Vinayak Dongre (supra) will thus clearly be applicable."

7. There can be no manner of doubt that it is now well settled that once a valuable right accrues in favour of a person by virtue of the provisions of Section 468 Cr.P.C. this right cannot be taken away except under the law. It is equally well settled that no order adverse to a party can be passed without notice to that party and without adhering to the principle of audi alteram partem, one of the enshrined principles of natural justice applicable to all kinds of proceedings, whether administrative or judicial. This is all the more so when the cause is of a criminal nature and cognizance is taken of a criminal offence as in the instant case.

8. In view of the aforesaid and relying upon the decision of the Hon'ble Supreme Court in Sharadchandra Vinayak Dongre (supra), I am of the view that the learned Metropolitan Magistrate could not have condoned the delay in the filing of the charge-sheet without notice to the respondents and without hearing the respondents, and that too by a cryptic order. In the result, I have no hesitation in setting aside the orders dated 20th December, 2005 and 24th October, 2008 with a direction to the learned trial court to first decide the issue of limitation after giving an opportunity of hearing to the petitioner in the case. On hearing the parties, if the learned trial court comes to the conclusion that there is no ground for condoning the delay and dismisses the application for condonation of delay, the same may entail dismissal of the complaint as well, as barred by limitation. On the other hand, if the learned trial court comes to the conclusion that there are sufficient grounds for condonation of delay and the application for condonation of delay is to be allowed, the learned Metropolitan Magistrate may then deal with the complaint in accordance with the provisions of the Code of Criminal Procedure.

9. The matter will now be listed before the learned trial court on 9th June, 2009, on which date both the parties shall remain present before the learned trial court.

10. CRL. M.C. 364/2009 and Crl. M.A. 1378/2009 stand disposed of in the above terms.

A copy of this order be given 'dasti' to both the parties, as prayed.

Sd/-
REVA KHETRAPAL, J.