

ABDUL GHAFOOR & ANR.

v.

STATE OF BIHAR

(Criminal Appeal No. 1812 of 2011)

SEPTEMBER 16, 2011

[AFTAB ALAM AND RANJANA PRAKASH DESAI, JJ.]

*Limitation – Condonation of delay – Conviction and sentence for commission of offence u/ss. 323, 447 and 452 IPC – Revision Petition – Appellant seeking condonation of delay of more than fifteen months – Revision petition dismissed by Patna High Court without going into the merits of the case as barred by limitation – On appeal held: High Court dismissed the appellant’s revision quite mechanically applying the bar of limitation and without giving any allowance to the circumstances of the appellants – Under the Patna High Court Rules, a revision against conviction can be entertained only after the revision-petitioner surrenders before the court below – Thus, when revision filed by the appellants was taken up by the High Court they were already in jail – In case, the revision was dismissed after consideration on merits, the appellants would have continued to remain in jail to serve out their sentences – Had the revision been filed in time, they would have surrendered 15 months earlier and thus, would have completed their sentence 15 months earlier – As such due to the delayed filing of the revision the appellant would complete their sentence, in case of dismissal of the revision 15 months later – Thus, the High Court should have condoned the delay in filing the revision by the appellants and examined their case on merits – Revision petition is restored to its original file – Patna High Court Rules.*

*Administration of criminal justice – Cases of conviction and imposition of sentence of imprisonment – Application of law of limitation – Held: In such cases the court must show*

- A *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 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.*
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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1812 of 2011.

- C From the Judgment and Order dated 27.09.2010 of the High Court of Patna in CRLR No. 1383 of 2010.

Gaurav Agrawal for the appellants.

- D Ardhendumauli Kumar Prasad (for Gopal Singh) for the Respondent.

The following order of the Court was delivered

### O R D E R

- E 1. Heard Mr. Gaurav Aggarwal, learned counsel appearing for the petitioners, and Mr. Ardhendumauli Kumar Prasad, learned counsel appearing for the State of Bihar.

2. Leave granted.

- F 3. The appellants were convicted by the trial Court (Judicial Magistrate –1st Class, Kishanganj), under Sections 323, 447 and 452 of the Penal Code and sentenced to two years rigorous imprisonment under Section 452 of the Penal Code; the substantive sentences for the other two offences were of lesser periods and all the sentences were directed to run concurrently. The appeal preferred by the appellants against the judgment and order passed by the trial court was dismissed by the Sessions Judge. They approached the High Court in Criminal Revision No.1383/2010 but the revision was filed after
- G

H

a delay of more than 15 months. The appellants sought condonation of delay in filing the revision taking plea that they were working in Delhi to earn their livelihood and it took them some time to go back to their home and take steps for filing the revision. The High Court did not accept the reason assigned by the appellants as a valid or sufficient reason for condoning the delay and, consequently, dismissed the revision, without going into the merits of the case, as barred by limitation. A B

4. We are unable to agree with the view taken by the High Court. C

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. D E F G

6. Coming to the case in hand, it is a well known fact that a large number of people come from Bihar to Delhi leaving their hearths and homes to earn a livelihood. A vast number of them work in unorganized sectors. Once caught in the vortex of earning the daily bread, all other important things in life such H

A as marriage in the family, medical treatment and even defending  
 oneself in a criminal proceeding are relegated to the  
 background. We feel that the High Court dismissed the  
 appellant's revision quite mechanically applying the bar of  
 limitation and without giving any allowance to the circumstances  
 B of the appellants.

7. Looking at the matter from another point of view, under  
 the Patna High Court Rules, a revision against conviction can  
 be entertained only after the revision-petitioner surrenders  
 before the court below. Thankfully, this rule, unlike some other  
 C provisions of the High Court Rules, is still followed very strictly.  
 Thus, as the revision filed by the appellants was taken up by  
 the High Court they were already in jail. In case, the revision  
 was dismissed after consideration on merits, the appellants  
 would have continued to remain in jail to serve out their  
 D sentences. Had the revision been filed in time, they would have  
 surrendered 15 months earlier and thus would have completed  
 their sentence 15 months earlier. All that happened due to the  
 delayed filing of the revision is that they would complete their  
 sentence, in case of dismissal of the revision 15 months later.

E 8. In light of what is said above, we are clearly of the view  
 that it was a fit case in which the High Court should have  
 condoned the delay in filing the revision by the appellants and  
 examined their case on merits.

F 9. We, accordingly, set aside the order of the High Court  
 and restore the Criminal Revision Petition No.1383 of 2010 to  
 its original file. The High Court is requested to take it up for  
 hearing and decide it expeditiously. In the meanwhile, the  
 appellants shall continue to remain on bail, as granted by this  
 G Court.

10. The appeal is disposed of with the above observations  
 and directions.

H N.J.

Appeal disposed of.