

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM; NAGALAND; MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH

IA (Crl) 08 (AP)/2018 in Crl.A. 03 (AP)/2018

1. Shri Tap Punu

.....appellant/applicant

-Vs-

1. The State of Arunachal Pradesh

2. Shri Habung Obing

.....respondents

**BEFORE
HON'BLE MR. JUSTICE A M BUJOR BARUA
HON'BLE MR. JUSTICE NANI TAGIA**

JUDGEMENT & ORDER (ORAL)

27.03.2019
(AM BUJORBARUA.J)

None appears for the appellant/applicant when the matter is called for.

2. Heard Mr. S. Tapin, learned Senior Government Advocate appearing for the State authorities. We have also requested the assistance of Mr. D. Das, learned Senior counsel who was present in the Court and also heard Mr. D. Das, learned Senior counsel on the issue.

3. The appellant was convicted under Section 302/436 IPC as per the judgment and order dated 02.09.2014 of the learned Sessions Court, West Sessions Division, Yupia in Sessions case No. 132/2010 and accordingly sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- for the offence under Section 302 of the IPC and further rigorous imprisonment of 5 years and to pay a fine of Rs. 5000/- for the offence under Section 436 of the IPC.

4. Consequent to such conviction and sentence, the appellant was taken into custody and is presently undergoing the sentences. The appellant preferred the connected Criminal Appeal against the aforesaid judgment and order of conviction and sentence under Section 302/436. As there is delay in preferring the Criminal Appeal, the Interlocutory Application is filed for condoning of delay of 1281 days for filing the appeal.

5. In paragraph 5 of the application of condonation of delay against the appeal, the appellant states that he was not aware of the fact that against the conviction an appeal would not be placed before the High Court. As the aforesaid averment in paragraph 5 in the Interlocutory Application has not been opposed by the State authorities, the only way we can understand is that the appellant was either he was not informed by the Superintendent of Jail about his right to file an appeal or if informed and the consent was given, still the appeal was not placed before the High Court.

6. We have also taken note of the provisions of Clause 16.22 of the Arunachal Pradesh Prison Manual 2017. The Supreme Court in its pronouncement in the case of *Ramamurthy Vs. State of Karnataka* reported in *AIR 1977 SC 1739*, had provided for having a uniform law relating to the prisons and accordingly directed that a new all India Jail Manual be prepared. The Arunachal Pradesh Prison Manual 2017, prepared pursuant to the aforesaid requirement as well as, as per the recommendation of the expert committee constituted upon the direction of the Supreme Court in Writ Petition (Civil) 406/2013 titled *Re: Inhuman Conditions prevailing in 1382 prisons in India*.

7. Clause 16.22 of the Arunachal Pradesh Prison Manual 2017 is quoted as follows:

"The Superintendent should inform convicts of their right of appeal against conviction."

8. As Clause 16.22 clearly provides that it is the requirement that the Superintendent of Jail shall inform the convicts of their right to appeal against the conviction and the said provision having been incorporated in the Arunachal Pradesh Prison Manual 2017, which is an outcome of the direction of the

Supreme Court as indicated above, we are of the view that requirement to inform the convicts about their right of appeal against the conviction is a mandatory requirement.

9. Such requirement in our view also satisfies the requirement of Article 21 of the Constitution of India as interpreted by the Supreme Court which provides that a person may be deprived of his liberty only in accordance to the procedure established by law and such deprivation of personal liberty can be made only upon a strict and scrupulous observation of all the forms and rules of the law.

10. In this respect the Supreme Court has held as follows:

(i) In the case of *Francis Coralie Mullin Vs. Administrator, Union Territory of Delhi and Others* reported in (1981) 1 SCC 608 in paragraph 4 it was held that:

"The position now is that Article 21 as interpreted in Maneka Gandhi case requires that no one shall be deprived of his life or personal liberty except by procedure established by law...."

(ii) In the case of *State of Andhra Pradesh Vs. Challa Ramkrishna Reddy and Others* reported in (2000) 5 SCC 712 in paragraph 22 it was held that:

"Right to life is one of the basic human rights. It is guaranteed to every person by Article 21 of the Constitution and not even the State has the authority to violate the right. A prisoner, be he a convict or undertrial or a detenu, does not cease to be a human being. Even when lodged in the jail, he continues to enjoy all his fundamental rights including the right to life guaranteed to him under the Constitution. On being convicted of crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights."

(iii) In the case of *Kewal Pati (Smt) Vs. State of U.P. and Others* reported in (1995) 3 SCC 600 in paragraph 2 it was held that:

"A prisoner does not cease to have his constitutional right except to the extent he has been deprived of it in accordance with law. Therefore, he was entitled to protection."

11. If there is a requirement of law that the accused has to be informed of his right to file an appeal against the conviction and if such information was not provided or if provided and consented upon, the future requirements were not done, it can be construed that there is a violation of the established procedure of law.

12. In the instant case, the averments made by the appellant implies that either he was not informed of his right to file an appeal against the conviction or if informed and consented, the subsequent requirement for filing the appeal was not followed up.

13. Although notice was issued upon the opposite party No. 2 on 25.01.2019 and the Office Note dated 07.03.2019 indicates that service report is still awaited, we are of the view that as the question of condoning the delay would be decided upon the requirement of the State authorities to inform the applicant of the right to file an appeal or as the case may be of having not taken the required steps for filing the appeal even after the consent of the accused appellant and the entire decision being based upon a question of law, a further deferment of hearing the Interlocutory Application for condoning the delay is not required.

14. We have also taken note that the interlocutory application for condoning the delay was filed on 09.05.2018 and the notice was issued for the first time on 16.07.2018. But as because service on the opposite party No. 2 could not be completed, the hearing of the application for condoning the delay was not taken up. In such circumstance, the appellant/applicant is required to remain in custody without his appeal against a conviction being taken up on its own merit. The same is also a contributing factor to justify the interlocutory application being taken up without further waiting for the notices to be served on the opposite party No. 2.

15. The opposite party No. 2 being the informant may have a right to express their view at the time of hearing of the appeal and assist the Public Prosecutor for the purpose, but it does not appear that any vested right of the informant exists to sustain the conviction and sentencing of an accused on the basis of any claim of there being a finality in the judgment and order of conviction as no appeal was filed within the period of limitation, unlike that in the case of a civil dispute. The conviction and sentencing curtails the right to life provided under Article 21 of the Constitution of India and when such curtailment of right to life under Article 21 is compared with any right of the informant to sustain a conviction based upon the claim of their being a finality of the judgment and order resulting in the conviction, the fundamental right of life under Article 21 would invariably prevail over any legal right of the informant, more so when the right to file an appeal had been vitiated as in the present case the State authorities had not followed the due procedure prescribed by law.

16. In view of the above, the delay of 1281 days in filing the connected Criminal Appeal is condoned.

17. In terms above the Interlocutory Application stands allowed.

JUDGE

JUDGE

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