

Present:

Mr. Justice Mohammad Marzi-ul-Huq
and

Mr. Justice Md. Ruhul Quddus

Criminal Revision No.1374 of 1992

Noab Mia and another

... Petitioners

-Versus-

The State

... Opposite Party

No one appears for the petitioners

Mrs. Syeda Rabia Begum, A.A.G.

... for the opposite party

Judgment on 6.6.2012

Md. Ruhul Quddus, J:

This Rule at the instance of the convict-appellants was issued on an application under section 439 of the Code of Criminal Procedure challenging order dated 7.9.1992 passed by the Sessions Judge, Brahmanbaria in Criminal Appeal No.71 of 1992 dismissing the appeal summarily on rejection of an application for condonation of delay in filling the appeal that was preferred against judgment and order dated 30.12.1991 passed by the Additional District Magistrate, Brahmanbaria in D. M. Case No.36 of 1991 (arising out of Brahmanbaria Police Station Case No. 5 dated 3.11.1981 corresponding to G. R. No. 958 of 1981) convicting petitioner No.1 under sections 467, 468 and 471 of the Penal Code and sentencing him thereunder to suffer rigorous imprisonment for five years with a fine of Taka 5000/-, in default to suffer rigorous imprisonment for another one year, while convicting petitioner No.2

under sections 467 and 109 of the Code and sentencing him thereunder to suffer rigorous imprisonment for three years with fine as above.

Facts necessary for disposal the Rule, in brief, are that the informant Haji Ahmed (now dead) initially had filed a petition of complaint before the Sub-Divisional Magistrate, Brahmanbaria against the petitioners and two others bringing allegation of forgery of a document in his name and registering the same in the Office of Sub-Registrar, Brahmanbaria on 19.4.1980. The Sub-Divisional Magistrate sent the complaint to the Officer-in-charge, Brahmanbaria Police Station directing him to treat it as a first information report and do the needful. It is mentioned that accused-petitioner No.1 is the son of the informant.

Police recorded the complaint as Brahmanbaria Police Station Case No.5 dated 3.11.1981 and after investigation submitted charge sheet under sections 467, 468, 471 and 109 of the Penal Code against the petitioners and others on 24.1.1982. The Sub-Divisional Magistrate accepted the police report by his order dated 4.2.1982 and issued warrant of arrest against the accused. Long after acceptance of the police report, the petitioners surrendered before the Court on 25.1.1990 and obtained bail, but subsequently did not turn up to the Court and as a result their bail was cancelled. After observance of necessary legal formalities, the case was made ready for trial and was sent to the District Magistrate, Brahmanbaria, wherein it was registered as D. M. Case No.36 of 1991. Subsequently it was sent to the Additional District Magistrate, Brahmanbaria for hearing and disposal. The Additional District Magistrate framed charge under sections 467, 468 and 471 of the Code against petitioner No.1 and under

sections 467 and 109 against two others including petitioner No.2 by order dated 24.8.1991 and proceeded with trial.

Prosecution examined five witnesses in support of its case. Of them P.Ws.1, 2 and 3 Makbul Hossain, Jinnaten Nesa and Jahirul Haque were the son, widow and brother-in-law respectively of the informant. P.Ws.4-5 Dr. Abdul Kader and Chand Badsha respectively were two local witnesses. All of them supported the prosecution case. As the accused persons were absconding, the prosecution witnesses were not cross-examined. After conclusion of trial, the trying Magistrate found the petitioners guilty and accordingly convicted and sentenced them by judgment and order dated 30.12.1991 as aforesaid. Against the said judgment and order of conviction and sentence, the petitioners preferred a time-barred appeal being Criminal Appeal No.71 of 1992 before the Sessions Judge, Brahmanbaria. The petition of appeal was accompanied by an application for condonation of delay under section 5 of the Limitation Act. Learned Sessions Judge heard the application, rejected the same and thereby dismissed the criminal appeal summarily by order dated 7.9.1992. Against the said order of dismissal, the convict-appellants moved in this Court with the instant criminal revision and obtained the Rule. Subsequently they were enlarged on bail.

This revisional application has been appearing in the cause list for several days with name of the Advocate for petitioners. It is taken up for hearing, but no one appears to support the Rule. In view of its long pendency for more than twenty years, we take it up for disposal and allow the Assistant Attorney General to make her submissions.

Mrs. Syeda Rabia Begum, learned Assistant Attorney General takes us through the records including the order sheets of the trial Court and the very application for condonation of delay in filing the appeal, and submits that the appeal was barred by eight and quarter months, but in the application there is no mention about delay of how many days were there in preferring the appeal.

Mrs. Rabia further submits that in view of the fact that the informant died on 11.9.1985, the cause of delay as explained in the application under section 5 of the Limitation Act does not raise any confidence. The impugned order does not suffer from any illegality and as such the Rule is liable to be discharged.

We have considered the submissions advanced by the learned Assistant Attorney General and examined the records. It appears that the informant died on 11.9.1985. Long after his death, the petitioners surrendered on 25.1.1990 and wangled an order of bail from the Court on the plea of compromise with the informant. In so doing, they had managed a woman named Ranga Bala Begum to appear before the Court, who pretended to be the widow of the deceased informant and apprised the Court that she had no objection if the petitioners were granted bail. Subsequently the real widow of the deceased informant Jinnaten Nesa appeared in person before the Court and filed an application for canceling their bail stating that she did not appear before the Court on 25.1.1990, and that no compromise had taken place between the informant and petitioners. On hearing of the said application, the trial Court cancelled the petitioners' bail. Thereafter, the petitioners did never turn back to the Court.

Under the above facts and circumstances, the explanation offered in the application for condonation of delay to the effect that because of compromise

between the informant and petitioners, they did not turn up to the Court is not correct and therefore, not acceptable. If there was any compromise they could have filed an application for compounding the offence before the trial Court, which they did not. It rather appears that they had committed fraud upon the trial Court and when the fraud was detected, they absconded. Moreover, in the application for condonation of delay, it was not mentioned that delay of how many days occurred to file the appeal.

The learned Sessions Judge on consideration of the application rejected the same on the ground *óZúKZ i vq I mvRvi Avxk ueMZ 30/12/1991 Bs Zwi L- G cPwi Z nI qvi mj xN[©]vvqv AvUgvm c* GB Avcxj Lwib `vxi nBqv*| Zgv`x AvBxi 5 avivi `iLv`†`vLj x KvMRv`x nBx vlv hvq Avcxj Kvi x Avmvgx `BRbB GB gvgj vi K_v mg`K AeMZ uOxb| Zvnvi v wbgvAv`vj Z nBx Rwg* gy³ nBqv cj vZK nBx Zvnvxi wei x wR`vi x Kvh[©]ieai 339 ue (2) aviv g* uePvi Kv[©]Aby[®]VZ nq| `cóZtB Avcxj Lwib nZvkv[©]ÄKfv* Zgv`x e`wi Z| Zgv`x AvBxi 5 avivi `iLv`†vxi mj xN[©]vvqv AvUgvm uej x† vKvi Y vlvb nBqv* Zvnv GB uej [^]gvR[®]vi Rb` Avx{hxó I MhYxM` bx|ö We do not find any illegality in the impugned order.*

The Rule, having no substance, is discharged. The impugned order dated 7.9.1992 passed by the Sessions Judge, Brahmanbaria in Criminal Appeal No. 71 of 1992 is hereby maintained. The petitioners are directed to surrender before the trial Court to serve out the remaining period of their sentences.

Send down the records of lower Courts.

Mohammad Marzi-ul-Huq, J:

I agree.