

APPELLATE CRIMINAL

Before Bhandari, C.J. and Falshaw, J.

THE STATE,—Appellant.

versus

DITTU RAM,—Accused-Respondent.

Criminal Appeal No. 2-D of 1953.

1953
 November, 4th
 Code of Criminal Procedure (V of 1898), Section 417,
 Indian Limitation Act (IX of 1908), Section 5—Appeal
 against the order of acquittal presented after the period of
 limitation—Whether delay in presenting the appeal should
 be condoned—Rule stated.

Held, that in dealing with applications under section 5 of the Indian Limitation Act, Courts are always influenced by the consideration whether extension of the period of limitation is likely to affect the rights which have come to vest in the opposite party by efflux of time. If therefore a convict's appeal is out of time, it is the practice of this court to condone the delay as no right can be said to vest in the State to have the conviction of an innocent person upheld. If, on the other hand, the State itself is negligent in the presentation of an appeal against acquittal, a very clear right comes to vest in the accused person and he is entitled to claim that, save in exceptional circumstances, delay in filing the appeal should not be condoned.

Appeal from the order of Shri J. D. Sharma, Magistrate, 1st Class, Delhi, dated the 21st June 1952, acquitting the accused.

BISHAMBER DYAL, for Appellant.

A. L. PATNEY, for Respondent.

JUDGMENT

Bhandari, C.J. BHANDARI, C.J. Before this appeal under section 417 of the Criminal Procedure Code can be decided on merits, it is the duty of the Court to determine whether the delay in presenting the appeal should be condoned.

An appeal against an order of acquittal should be presented within a period of six months from the date of the order. The order of acquittal in the present case was passed on the 21st June, 1952, an application for a copy of the order was made on the 7th October and the copy was supplied the same day. The appeal was presented in Court on the 13th February 1953, that is, a little less than two months after the expiry of the period of limitation. The question is whether the State has shown sufficient cause for presenting the appeal after the expiry of so long a period.

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While dealing with applications under section 5 of the Indian Limitation Act, Courts are always influenced by the consideration whether extension of the period of limitation is likely to affect the rights which have come to vest in the opposite party by efflux of time. If, therefore, a convict's appeal is out of time, it is the practice of this Court to condone the delay as no right can be said to vest in the State to have the conviction of an innocent person upheld. If, on the other hand, the State itself is negligent in the presentation of an appeal against acquittal, a very clear right comes to vest in the accused person and he is entitled to claim that, save in exceptional circumstances, delay in filing the appeal should not be condoned. In the present case it seems to me that a definite right has accrued to the respondent to remain at large and it is unreasonable that he should be deprived of this right and be subjected to the trouble and expense of answering a charge of which he has been acquitted. In *Emperor v. Shiva Adar* (1), it was held that the discretion conferred by section 5 of the Limitation Act should be exercised in accordance with recognised judicial principles and that

(1) 6 Cr. L.J. 221

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the words "sufficient cause" should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of *bona fides* is imputable to the appellant. It was held further that delay in the filing of an appeal ought not to be excused unless there are special circumstances, namely, a misleading by the other side or a mistake in the office itself or some sudden accident which could not be foreseen. Delay in the present case is sought to be condoned on the ground that the papers concerning this case were mislaid in the office. This case does not appear to me to fall within the ambit of the expression "sufficient cause" and the only order that can be passed in the circumstances is that the appeal must be dismissed. I would order accordingly.

Falshaw, J. FALSHAW, J.—I agree.

INCOME-TAX REFERENCE.

Before Khosla and Kapur, JJ.

M/s. PANDIT BROS., Chandni Chowk, Delhi,—*Petitioner.*

versus

THE COMMISSIONER OF INCOME-TAX, DELHI,—*Respondent.*

Income-Tax Case (Civil Reference) No. 19 of 1953.

1954

March, 24th

Indian Income-tax Act, (XI of 1922)—Section 13 proviso—Conditions for its application—No stock account maintained—Whether entitles the Income-tax Officer to make additions to the book version of business profits on the sole ground that the net profits disclosed appear to be insufficient in relation to the total turn-over.

Held, that the wording of the proviso to section 13 makes it quite clear that before the Income-tax Officer can reject the final statement of profit and loss given by the assessee he must either hold that there is no method of accounting or that the method employed is such that it does not disclose the true profits and losses of the firm.