

ALLAHABAD HIGH COURT

State

Vs.

Kashi Prasad

Criminal Appeal No. 174 of 1950

(Raghubar Dayal, J.)

21.12.1948. 16.02.1950

JUDGMENT

Raghubar Dayal, J.

1. This is a Government appeal against the order of Shri Laxmi Kant, Judicial Magistrate, first class, Kanpur, dated 21st December 1948 in case No. 280 of 1948. It was filed on 29th October 1949. The office report shows that the appeal was beyond time by more than four months. It was put up before the Court on 4th November and the Court allowed two weeks for the filing of an application under Section 5, Limitation Act, supported by an affidavit.

2. On 16th November 1949 an application under Section 5, Limitation Act, was filed and it was put up before this Court on 17th November 1949. The affidavit was filed by Shri A.M. Hajaila, Income tax Officer, Kanpur Paragraphs 5 and 6 are :

"5. That the copies of the judgment were applied for on 8th January 1949 and issued on 21st May 1949 and it was an accidental slip in not mentioning the dates of applications for copies and their delivery on the back of the judgment.

6. That on 11th November 1949 Officer-in Charge of copying department Collectorate, Kanpur, certified that copies of judgments in *Rex v. Kashi Prasad under Section 1* Penal Code, were applied for on 8th January 1949 and copies in the two cases were issued on 21st May 1949. The certificate is attached along with the affidavit."

3. The Court ordered on 17th November that the copy of the judgment supplied to the Crown in this case did not mention the date on which the application was made and the date on which the copy was ready and notice was given for taking it away, and directed that the copy be sent back to the District Magistrate, Kanpur, for having the defect rectified.

4. The copy of the judgment was accordingly sent to the District Magistrate on 18th November. The copying department of the District Magistrate, it appears, then sealed this copy with the stamp of "true copy" on 29th November 1949. In his letter dated 30th

¹52, Income-tax Act, and Section 177

November 1949, the District Magistrate informed this Court that the copy of the judgment sent to him was not applied for, but was prepared in the office of the Income-tax Officer and was certified as true copy after comparison in his office. He also stated in his letter that another copy was applied for on 8th January 1949 and was prepared on 21st May 1949, on which day the notice for taking it away was also given.

5. The learned Deputy Government Advocate contended that the appeal was filed within time if the period between 8th January and 21st May 1949 be taken into consideration as the requisite period for the preparation of the copy of the judgment. I see no good reason why that period should be taken as the period requisite for the obtaining of the copy of the judgment when the copy filed along with this appeal is not the copy which was obtained from the office of the District Magistrate on an application for copy presented on 8th January. It was held by a Full Bench of the Madras High Court in Panjam, *Thirumala Reddi v. C.K. Anavema Reddi*², that the time requisite for the preparation of a copy is to be with respect to the time required for the preparation of the copy which accompanied the appeal and not for the preparation of any other copy. This view of the Madras High Court was dissented from by the Lahore High Court in *Mathela v. Sher Mohammad*³. With respect I agree with the view expressed in the Madras case. The Court has to determine the question of an appeal being filed within limitation or not on the basis of the material before it, and the original material before the Court must always be the copy accompanying the memorandum of appeal. The Court is not concerned with any other copy issued by the copying department. The time requisite for the preparation of a copy does not mean the time in which in certain circumstances the copying department can issue a copy of the judgment. It must have reference to the copy filed along with the appeal. It follows, therefore, that this period between 8th January and 21st May 1949 is not the period which is to be excluded in computing limitation with respect to the filing of this appeal.

6. The copy filed was not prepared in the copying department of the District Magistrate. It was just certified by his office as a true copy on 19th October 1949, presumably on the request of the income-tax department. I do not think that the time taken in the preparation of this copy anywhere can be treated as the time requisite for the obtaining of a copy of the decree. Further, it is not clear as to how much time this copy took in preparation in the office of the income-tax department. Therefore, no time taken in the preparation of this copy can be taken into consideration.

7. The learned Deputy Government Advocate wanted further time for making inquiries from the income-tax department about these copies. I do not allow the time. It would appear from paras. 5

and 6 of the affidavit of the Income tax Officer quoted above that it was tried to be shown that the copy filed with the appeal was the copy which was applied for and obtained from the office of the District Magistrate and that the certificate issued by the head copyist related to this copy. It was clearly mentioned in para 5 that it was an accidental slip in not mentioning the dates of applications for copies and their delivery on the back of the judgment. There was no question of accidental slip when the copy was not prepared in the office of the District Magistrate on an application for copy. The District

²57 Mad 560: (AIR 1934 Mad 306)

³17 Lah 621: (AIR 1935 Lah 682)

Magistrate's office just obliged the income-tax department by certifying this copy as a true copy. It is to be deeply regretted that an affidavit by a responsible officer should not have been precise and should have been drafted in such a form as to mislead this Court. In view of this conduct on behalf of the appellant, I am not prepared to allow any further time for showing that the appeal was filed within time. I, therefore, reject this appeal as time barred.

Appeal rejected.