State Of Uttar Pradesh vs Christopher Tobit And Ors. on 8 February, 1955

Equivalent citations: AIR1955ALL273, 1955CRILJ1213, AIR 1955 ALLAHABAD 473

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Beg, J.

1. Eight persons were charged under Sections 147, 323, 325, and 326 read with Section 149, Penal Code. They were tried by Shri Balram Sinha, Temporary Civil and Sessions Judge of Gorakhpur, in respect of the aforesaid offences. The trial court acquitted all of them by its order dated 24-7-1953.

2. On 25-1-1954 the Government filed an appeal in this Court against the said order of acquittal. Along with the memorandum of appeal, the Government did not file a certified copy of the judgment of the trial court. A typed copy of the judgment was, however, annexed to the memorandum of appeal. On the same day the office made a report that the copy of the judgment filed along with the petition of appeal was not a certified one. A certified copy of the judgment was, however, filed by the appellant on 25-2-1954, after the period of limitation for filing the Government appeal had already expired. This copy was accepted by the Court on 25-2-1954. (Note: This order of the Court appears to have been erroneously dated as 25-1-1954). The appellant was allowed three days' time for making an application under Section 5, Limitation Act for condoning the delay in furnishing the copy and filing the appeal.

On 27-2-1954, the applicant filed an application under Section 5, Limitation Act praying that the delay in tiling the certified copy of the judgment of the trial Court and in filing the appeal be condoned. This application was ordered to be put up' before a Division Bench for necessary orders. It was accordingly placed before us for orders. At the time of the hearing of the application, the learned counsel for the appellant, however, took up the position that the typed copy of the judgment of the trial court filed along with the memorandum of appeal constituted a sufficient compliance with the requirements of law. He argued that Section 419, Criminal P. C. did not require that the copy of the judgment filed along with the memorandum of appeal should be a certified one. He, accordingly, contended that the appeal was filed within limitation. The matter has been argued ex

parte before us by the counsel for the State, as no notice has so far been issued to the opposite party.

3. Having heard the learned counsel for the State, I find myself unable to agree with this plea. This petition of appeal was filed under Section 419, Criminal P. C. which provides as follows:

> "Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and, in cases tried by a jury, a copy of the heads of the charge recorded under Section 367."

It is argued on behalf of the State that all that the above section requires is that the memorandum of appeal should be accompanied by "a copy of ' the judgment or order appealed against." It does not say that the copy that should accompany the memorandum of appeal should be a certified copy. It is contended that a typed copy filed along with the memorandum of appeal is a copy of the judgment and its filing, therefore, would be a sufficient compliance with the requirements of law.

4. In this connection two facts might be noted at the very outset. The first is that in these proceedings the petition of appeal is presented before a Court of law viz., the appellate Court and the second is that after its presentation the appellate Court is required to peruse it and, after applying its mind to the merits of the case to pass necessary orders on it; This is apparent from Section 421,Criminal P. C. which lays down that:

> "On receiving the petition and copy under Section 419 or Section 420, the Appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily; provided that no appeal presented under Section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same,
>
> 2. Before dismissing an appeal under this section, the Court may call tor the record of the case, but shall not be bound to do so."

This section requires the Court to peruse the judgment and to dismiss the appeal summarily, if in its opinion no sufficient grounds are made out for interfering with the judgment or order appealed against. The Court is, therefore, required to apply its mind to the contents of the judgment at the very moment that it receives the petition of appeal with a copy of the judgment attached thereto. It is not possible for the Court to perform this task unless it is satisfied in respect of the correctness of the copy. The Court has power to dismiss the appeal summarily and without even cal-ling for the record if it is of opinion that no sufficient grounds have been made out for interfering, but before it does so, it should give a reasonable opportunity to the appellant or his pleader of being heard in respect of the same. For this purpose also it is necessary for the appellant or his pleader to present a copy of the judgment of the trial court in a form which would enable the appellant or his pleader to refer to its contents.

It is apparent that neither the Court can look at the document for the above purpose, nor can the appellant refer to it for the aforesaid purpose unless there is a guarantee that the copy filed is a correct copy and the Court " is satisfied that the contents of the document purporting to be the judgment of the lower Court is a correct copy of the original judgment. If at this preliminary stage the appellate Court is satisfied that a sufficient prima facie case is made out for interfering with the judgment of the trial Court, then the appellate Court takes further action under Section 422, Criminal P. C. which lays down as follows:

> "If the Appellate Court docs not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his pleader, and to such officer as the Provincial Government may appoint in this behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal;
>
> and, in cases of appeals under Section 411-A, Sub-section (2) or Section 417, the Appellate Court shall cause a like notice to be given to the accused".

I find it difficult to understand as to how it is possible for the Court to act at all on a copy of the judgment unless it is first satisfied that the document purporting to be a copy of the judgment is in fact a correct copy of the same. The preliminary proceedings that take place under Section 421, Cr. P. C. on receipt of the memorandum of appeal and which require the Court to apply its mind and to reject the appeal summarily under that section or to issue notice to the other party under Section 422, Cr. P. C. are highly important proceedings.

The fate of the entire case might hang on this preliminary order as the Court is entitled to reject it summarily if the appellant is unable to satisfy it at that stage that there are sufficient grounds for interference.

5. Apart from the initial order of rejection or admission of appeal, which is to be passed by the Court after it peruses the contents of the judgment of the lower Court and applies its mind to it, certain important proceedings of a supplementary nature might also have to be taken in connection with the case at the time of the receipt of the memorandum of appeal by the Court. Thus, for example, in cases of appeal by the accused, an application for bail or stay of execution of the order might be filed before the Court. If the appeal is by the Government, there might also be the usual prayer in the said appeal as there is in the present one, that "warrants be issued for the arrest of the accused pending the disposal of the appeal". The orders by the Court in connection with these supplementary proceedings may be orders that vitally affect the parties and I cannot see how it is possible for the Court to pass them unless the Court is satisfied in law that the document placed before it is a correct copy of the original judgment.

6. It may be relevant at this stage to note that the corresponding provision in the Code of Civil Procedure is a similar one. It is contained in Order 41, Rule 1, which runs as follows:

> "1 (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.
>
> (2) The memorandum shall set forth concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively".

7. Order 41, Rule 3, Civil P. C. entitles the Court to reject the memorandum of appeal where it is not properly drawn up and makes it incumbent on the Court to record the reasons for such rejection. It also authorises the Court to return it to the appellant, if necessary, for the purpose of being amended within a time to be fixed by the Court. Order 41, Rule 11 empowers the Court to dismiss the appeal summarily even without sending for the record of the lower Court and without issuing notice to the other party.

8. Order 41, Rule 5, Civil P. C. lays down that a Court may pass a stay order alter the appeal is preferred from, the decree, if sufficient grounds are made out for ordering stay of the execution o the decree. Under Sub-clause (4) such stay orders may be passed ex parte pending the hearing of the application.

8a. Apart from the incidental orders relating to the appeal, the Court has to be satisfied that the appeal itself is prima facie within the period of limitation prescribed by law.

9. Section 3, Limitation Act runs as follows: "Subject to the provisions contained in Sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although Limitation has not been set up as a defence. Explanation: (omitted.....)".

10. It will be impossible cither for the office to report on the question of limitation or for the Court to determine this question unless it is satisfied that a correct copy of the judgment is filed along with the memorandum of appeal.

11. Section 5, Limitation Act prescribes the conditions under which the Court may condone the delay in filing the appeal.

12. Section 12(2), Limitation Act provides: "In computing the period of limitation prescribed for an appeal, an application for leave to appeal and an application for a review of the judgment, the day on which the judgment complained was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be reviewed, shall be excluded".

13. A reference to the endorsement made at the back of the certified copy of the judgment by the copying department is necessary to enable the Court to determine the amount of time which the

appellant is entitled to exclude under the aforesaid provision. It is difficult to understand as to how it is possible to compute the time to be excluded in case an uncertified copy of the judgment is allowed to be filed.

14. Further in civil cases the important question of court-fee will have to be determined at the very inception. Section 4, Court-fees Act provides;

> "No document of any of the kinds specified in the first or second schedule to this Act annexed, as chargable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original jurisdiction:
>
> or, in the exercise of its extraordinary original criminal jurisdiction;
>
> or, in the exercise of its jurisdiction as regards appeals from the judgments (other than judgments passed in the exercise of the ordinary original Civil jurisdiction of the Court) of one or more judges of the said Court, or of a division Court;
>
> or, in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence;
>
> or, in the exercise of its jurisdiction as a Court of reference or revision; unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document".

15. A memorandum of appeal is a document that is clearly covered by Section 4, Court-fees Act. In --'Balkaran Rai v. Gobind Nath Tewari', 12 All 129 (FB) (A), which is a Full Bench decision of the Allahabad High Court it was held that an appeal is not presented within the meaning of Section 4, Limitation Act (15 of 1817) unless it is accompanied by copies required by the Code, and that a memorandum of appeal is a document within the meaning of Section 4, Court-fees Act, and therefore,, cannot be filed or recorded in or received by the High Court unless and until the proper court-fee in respect of it is paid and further it is of no validity until it is properly stamped.

16. Unless, therefore, the Court is satisfied that the amount of court-fee paid on the document is correct and as required by law, the Court is prohibited from receiving it or entertaining it or acting upon it in any way. A reference to judgment and decree might also be necessary in civil cases for determining correctly the question of valuation on which may depend the initial question of jurisdiction of the Court before which the memorandum of appeal is presented.

17. I have adverted to the above consideration by way of instances of important acts which the Court is called upon to perform on the presentation of the memorandum of appeal before it. Most of them have to be performed before the notice is issued to the other side. I fail to understand how it is possible for the Court to perform all these acts unless it has before it a, copy which is recognized in law to be a correct copy of the judgment.

18. On behalf of the appellant it is said that the fact that the Court is allowed to dispense with the copy of the judgment in certain cases shows that its production was not considered absolutely necessary, and therefore, an uncertified copy might be enough. I do not think that the latter is a necessary corollary of the former. It may be that the Courts are given this discretion because in certain exceptional cases e.g. in cases of connected appeals arising out of the same judgment, a certified copy of the judgment filed in the case is already before the Court, hence under those special circumstances a party might be exempted from furnishing a further copy of the same in another case, because it is not considered necessary by the Court. There might be certain other circumstances of an exceptional type which may induce the Court to forego its production on the ground that the Court does not regard it as necessary in that case. But from that it does not follow that in a case where the Court does regard it as necessary, it should content itself with a document before it which has no value in the eye of law and is, for all intents and purposes, a waste paper until it is proved.

19. On behalf of the appellant it is said that the appellant does not derive any benefit from these proceedings and so there is no occasion for his being called upon to prove any document, not does the law cast any such burden on him. To my mind this argument is misconceived. The appeal obviously filed for the benefit of the appellant. There is already a judgment of the lower Court against him and the purpose of, the appeal is to have it modified or set aside. It is to his interest to see that it is not summarily rejected at the time of its presentation. In his own interest he may further pray for certain incidental orders in connection therewith, for example, order relating to bail in criminal appeal or orders relating to stay of execution in civil appeals. It is, therefore, the appellant's duty to see that the appeal is presented in a form that makes the memorandum of appeal not merely maintainable but also entertainable se as to save the appeal from suffering the fate of summary rejection at the hands of the Court.

It is further for the appellant to present the judgment of the lower court in such a form as to entitle him to invite the court to apply its mind to the contents of the judgment in question and to satisfy the Court on merits that it deserves an order of admission, and such further incidental or consequential orders for which the appellant prays in connection therewith. Further it is for the appellant to satisfy the Appellate Court that the appeal does not deserve to be thrown out on the preliminary ground of limitation and is also a document on which the necessary court-fee has been paid to enable the Court to entertain or to receive it. The appellant must, therefore, do all this in his interest to save the fate of summary rejection which must inevitably await an appeal which is defective in form or devoid of merits.

20. It is suggested on behalf of the appellants that even if the Appellate Court wants to be satisfied that the copy filed by appellant is a true copy, it can examine the appellant or any witness who has prepared it or compared the same with the original. I find no provision either in the Code of Criminal Procedure or in the Code of Civil Procedure laying down that the Court should resort to a procedure of this nature at that stage. Both the Civil Procedure Code as well as the Criminal Procedure Code have specifically laid down in detail the form and the stages at which the Court is enjoined to take evidence or allow parties to adduce it. The fact that in neither of them is the production of any evidence of this nature provided at that stage can only be taken as indicative of

the fact that in neither of them was the production of such evidence at that stage contemplated. Even if the Court had any such inherent power, there appears to be no reason why the Court should invoke it at all in order to help a party that has not cared to help the Court.

21. Moreover, the adoption of such a procedure would obviously result in a good deal of inconvenience and waste of time of the Court. Witnesses will have to he produced to prove that the uncertified copy filed is a correct copy of the original. Further, if such evidence were to be taken, it would be proper in fairness to the other party that a notice should be issued to it in order to enable it to have an opportunity of cross-examining the witnesses and also to produce evidence in rebuttal" if necessary. Even after all this amount of labour and time has been put into the task of the discovery of the fact whether copy is correct, it might turn out in the end that the copy produced has some mistakes. This might again give rise to a multiplicity of legal questions relating to their effect on the case. On the one hand it might be argued for the appellant that the law on this point should be liberally construed and mistakes being merely of a clerical type, there has been substantial compliance with the provisions of law.

On the other hand it might be argued for the respondent that the law on the point should be strictly construed; and, in any case, the mistakes being of a material type, the law has not been complied with. Thus the Court would at the very inception be involved in a maze of technicalities and omplications entailing an enormous amount of unnecessary work. A cumbersome procedure of this nature would not only lead to inconvenience but would also result in a good deal of confusion at an initial stage. It is bound, at any rate, to delay justice in a manner so as to defeat it. It will further result in a waste of time of the Court unwarranted by the exigencies of the situation. In fact the time actually spent in admission of most of the appeals might far exceed the period taken in their disposal by the Court on merits. Such a procedure is, therefore, neither feasible nor practicable.

22. Further, it would also not be legal as the procedure of proving the correctness of the copy of the judgment by oral evidence is not warranted by the provisions of Evidence Act. Under Section 61, Evidence Act "the contents of a document may be proved either by primary or by secondary evidence".

23. Section 62, Evidence Act provides that "primary evidence means the document itself produced for the inspection of the court."

24. According to Section 63(i) secondary evidence means and includes certified copies given under the provisions of the Evidence Act. Under Section 64, Evidence Act documents must be proved by primary evidence except in the cases enumerated thereafter.

25. Section 65, Evidence Act runs as follows: Secondary evidence may be given of the existence, condition or contents of a document in the following cases:

> ((a) to (d) omitted.) (e
>
> (e) when the original is a public document within the meaning of Section 74;

> (f) when the original is a document of which 8 certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence."
>
> (g) (omitted.) In case (e) or (f) a certified copy of the document but no other kind of secondary, evidence is admissible."

26. In my opinion the above provisions of Section 65, Evidence Act have an important bearing on the point under consideration and their effect is clearly to cut out all kinds of evidence whether oral or documentary for the purpose of proving the existence, condition or contents of public document whose original is not proved to have been destroyed or lost or unavailable except a certified copy of the document itself.

27. According to Section 74(3), Evidence Act documents forming the acts or records of the acts of public officers, legislative, judicial and executive, would be included in the category of public documents. A judgment or decree of a court of law would, therefore, be a public document under Section 74, Evidence Act. A reference in this connection might be made to the case -- 'Ladli Prasad v. Emperor', AIR 1931 All 364 (B), in which Young J., considering the above question after referring to Section 74, Evidence Act observed as follows:

> "It is clear therefore that a judgment of a Court is a public document within the meaning of Section 74."

The ruling reported in -- 'Nand Kumar v. Emperor', AIR 1937 Pat. 534 (C), would also support the same view.

28. Section 76, Evidence Act defines certified copies of public documents as follows: "Every Public officer having the custody of a public document which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal and such copies so certified shall be called certified copies."

29. Section 77, Evidence Act lays down that: "Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies."

30. Section 79, Evidence Act lays down that the Court shall presume every document purporting to be a certified copy duly certified by the officer authorized in that behalf to be genuine. The effect of this provision of law would be that once a certified copy of the judgment is produced in Court, it would have to be presumed as genuine and would prove itself. No further proof of its genuineness would be needed as the certificate appended to it -would in law itself constitute a sufficient guarantee of its correctness as a copy.

31. Section 91, Evidence Act lays down that: "When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained." A reference to Sections 367 and 424 Cr. P C. and Order 21, Rules 3, 4, 5 and 6, Civil P. C. would show that judgments of criminal courts and judgments and decrees of civil courts are required by law to be reduced to the form of a document. If Section 91, Evidence Act is read with Section 65(e) and (f) of the said Act, it must necessarily follow that a judgment of a Court can only be proved by means of a certified copy of the same and by no other mode. If any authority were needed for this proposition, a reference might be made to the cases -- 'Krishna Kishori Chowdhrani v. Kishori Lal Roy', 14 Ind App. 71 at p. 74 PC (D), where their Lordships of the Privy Council while considering this question made the following significant observations: "There are, however, cases under that Act in which secondary evidence is admissible, even though the original is in existence. One of the cases is under Section 65, letter e. 'When the original is a public document within the meaning of Section 74;' and another under letter f, 'when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence." But in either of those cases 'a certified copy of the document, but no other kind of secondary evidence is admissible.'"

> The ruling reported in -- 'Ram Lal v. Ghanasham Dass', AIR 1923 Lah 150 (1) (E), would also bear out the same proposition. It would not be correct to invoke -- 'Chhota Lal Amba Prasad v. Basdeo Mal Hiralal', AIR 1926 Lah 404 (F), in aid of the contrary proposition, for it appears that in that case a copy of the judgment was applied for by the appellant and the report was that the record of the file could not be traced. It was, therefore, covered by the exception relating to loss, destruction or non-availability of the original. Further the question in that case arose in a Second Appeal and the unattested copy that was filed was a copy of the judgment not of the lower appellate Court but of the first court, and the judgment of the Court shows that, under the circumstances, it did not think it necessary and must be taken to have dispensed with its production observing thus:
>
> "It is true that up to date no attested copy has been placed on this record but the appellant is ready to do so. I see no reason to call upon him to put such an attested copy upon the record and overrule the objection."

32. On behalf of the appellant a reference is made to certain provisions of the Civil Procedure Code and the Code of Criminal Procedure where a reference to a copy is made and yet a copy in such cases need not be a certified copy. Thus, for example, Section 87, Criminal P. C. provides that where a person is absconding, a proclamation in that regard might be issued by the Court and a copy thereof might be affixed to some conspicuous part of the house. Similarly Section 134, Criminal P. C. provides for affixation of a copy of an order of the Court in some fit place for conveying the information to a person to whom it is addressed. Other instances of a similar nature are cited.

In my opinion, however, such instances are distinguishable from a case under Section 419, Criminal P. C. or Order 41, Rule 1, Civil P. C. In the instances cited the acts of the court are more or less of a ministerial type. In any case they are certainly not cases in which a court of Taw is required by the statute to apply its mind to the contents of the copy in question and, after considering the merits of the case, to pass judicial orders of a vital nature on its basis as in the present case. The anology of such instances to the present case, therefore, breaks down and it would be a mistake to place the present case on a par with them.

33. In -- 'Reasat Ali Khan v. Mahfooz Ali Khan', AIR 1929 Lah 771 (G) a Bench of the Lahore High Court held that under the corresponding provisions of the Code of Civil Procedure i.e. Order 41, Rule 1 and Order 42 the word 'copy' means copy duly certified under the provisions of the Evidence Act and thus rendered capable of production before a Court of law for examination. I find myself in full agreement with the view taken in that case.

34. To my mind, in interpreting the provision of law in question it is not proper to tear out the word 'copy' from Section 419, Criminal P. C. and to construe it as a solitary word standing by itself in a dictionary divorced from its entire context and shorn of all its surroundings. In my opinion the word in question should be given a legal and a rational meaning in the light of the surrounding context provided by its setting in Section 419, Criminal P. C. and its legal purpose. It should further be construed so as to make Section 419, Criminal P. C. consistent and workable along with Sections 421 and 422, Criminal P. C. which follow on the heels of Section 419 and shed further light on its meaning.

Further it cannot be ignored that the sections in question in the Criminal and Civil Procedure Codes relate to presentation, rejection or admission of memorandum of appeals by courts of law and in the very process of effectuating this purpose, the relevant provisions of the Evidence Act, the Limitation Act and other relevant Acts are automatically attracted. Lastly, considerations of convenience, feasibility and practicability are also relevant in this regard and if they point to the same conclusion they cannot legitimately be ignored in the construction of a statute. Viewing the matter in this background, I am of opinion that the word 'copy' in Section 419, Criminal P. C. should be interpreted to mean a certified copy.

35. I would, therefore, hold that this memorandum of appeal is time barred and must be rejected unless the appellant is able to satisfy the Court that he had sufficient cause for not preferring the appeal along with a certified copy of the judgment as required by the law within the six months period of limitation and the delay in filing the appeal is condoned.

36. Having gone through the grounds given by the appellant in his application for condonation of delay, 1 am of opinion that the application should not be allowed. In view of the argument advanced before this Court one would expect that the main ground of the appellant seeking the condonation of delay would be that having regard to the wording of Section 419, Criminal P. C., the appellant's counsel was of opinion that a typed copy of the judgment would constitute a sufficient compliance with the provisions of law. Curiously enough the very ground that was advanced so vehemently before the Court is conspicuous by its absence in the application for condonation of delay. It must,

therefore, be taken that the delay in filing the appeal was not due to any misapprehension on the" part of the appellant or his counsel regarding the provisions of law on the point and they were fully aware of the fact that it was necessary to file a certified copy of the judgment along with the memorandum of appeal.

Under the circumstances, it was incumbent on the appellant-petitioner to give some other satisfactory explanation as to why a certified copy of the judgment was not filed along with the memorandum of appeal. No such explanation is forthcoming either in the application or in the affidavit. The Judgment by the trial Court in the present case was delivered on 24-7-1953. The affidavit which is filed along with the application under Section 5 states that on 23-1-1954, a letter No. 812/VII-AC .198.53 ('53 appears to be a mistake for '54) dated Luck-

now, 22-1-1954, was received from the Secretary to Government, Uttar Pradesh in the Judicial Department saying that the Governor had been pleased to order that an appeal should be filed in this Court against the said judgment. The affidavit further states that in the said letter it was stated that the limitation for filing the said appeal was to expire on 24-1-1954.

Paragraph 5 of the said affidavit states that no certified copy of the judgment of the trial Court was sent along with the said letter of the Judicial Secretary, but only a plain copy of the judgment of the trial Court was sent along with it. One would have expected that the application or the affidavit would specify some reason as to why a certified copy of the judgment was not applied for even though almost the entire period of nearly six months had expired since the delivery of judgment by the trial Court. There is absolutely no cause assigned for it in either the application or, the affidavit.

37. The memorandum of appeal is signed and dated 23-1-1954 which shows that it was ready on that date yet it was not presented till after court hours to the Joint Registrar on 26-1-1954. Even then no application for condonation of delay under Section 5, Limitation Act was made with it. Nor did the memorandum of appeal contain any prayer to the effect that time be given for filing a certified copy of the judgment. The order-sheet shows that on 9-2-1954, two weeks' time was allowed for filing a certified copy of the judgment together with an application under Section 5, Limitation Act. This two weeks' time expired on 23-2-1954 and the office report of that date shows that neither a certified copy of the judgment nor an application under Section 5 was filed even within the aforesaid period of two weeks, and three days further time was allowed. Certified copy of the judgment was filed on 24-2-1954, but even on that date the application under Section 5, Limitation Act was not filed at all,

38. The application for condoning the delay in filing the certified copy of judgment was made on 26-2-1954, without assigning any reason for it and without an affidavit. Subsequently, two applications for condoning the delay under Section 5, Limitation Act appear to have been made. One of them is dated 27th February and the other is undated. None of them appear to have been presented in the office till 1-3-1954. The grounds for condonation are given in the affidavit attached thereto. The endorsement on the certified copy of the judgment would show that the copy was applied for on 12-2-1954. The appeal in the High Court was filed on 25-7-1953. There is absolutely no explanation as to why no application for certified copy was made until 12-2-1954.

Paragraph 6 of the affidavit vaguely states that the application for a certified copy was made after the judicial record of the case was received in the High Court office to enable this Court to judge how far the applicants were diligent in applying for a certified copy of the judgment. Even if the record of the case was not received in the High Court there was nothing to prevent the applicant from giving an application for a certified copy of the judgment in the lower court. The endorsement on the certified copy of the judgment further shows that the certified copy was ready for delivery on 20-2-1954. Therefore, the delivery of the certified copy of the judgment could have been taken on that date or on 21-2-1954, and the certified copy of the judgment could have been filed in court on 20th February or, in any case, on 21-2-. 1954. The endorsement, however, shows that the delivery of the certified copy of the judgment which was ready on 20-2-1954, was not taken till after three days i.e., on 23-2-1954. In such cases every day's delay has to be accounted for and there is absolutely no explanation why this three days' time was allowed to elapse.

Even if the delivery of the certified copy of the judgment was taken on 23-2-1954, it might have been filed on that date but the certified copy of the judgment was not filed in Court till 24-2-1954. There is again no explanation at all for this further delay in filing the certified copy of the judgment in Court. In the application under Section 5, Limitation Act a ground for condonation of delay is that the office of the Government Advocate was not responsible for that delay. As mentioned above there is no adequate explanation why no application was made by the office till 12-2-1954, or why no delivery of the certified copy of the judgment was taken by the office of the Government Advocate on 20-2-1954, on which date the certified copy of the judgment was ready and as to why the said delivery was deferred till 23-2-1954. As already mentioned there is no explanation why if the delivery was taken on 23-2-1954, the certified copy of the judgment was not filed till 24-2-1954.

There is further no explanation as to why an application for condoning the delay in filing the certified copy of the judgment and in filing the application under Section 5 was itself delayed inspite of Court's orders, and no application under Section 5, Limitation Act was presented till 1-3-1954. This Court, however, is not concerned with the question whether the office of the Government Advocate was or was not responsible for the delay in the matter. The delay has got to be explained on behalf of the petitioner to the satisfaction of the Court. No such explanation has been offered. On the other hand the explanation that is offered discloses a case of gross negligence at every step. Even if the office of the Government Advocate was not responsible for the delay in applying and obtaining a certified copy of the judgment there is absolutely no reason why the authorities concerned did not apply and obtain a certified copy of the judgment prior to the date on which the appeal was filed and before 22-1-1954 when the letter was issued by the Judicial Secretary for filing of the appeal.

This initial delay by the authorities concerned and the complete absence of any explanation in this regard is itself sufficient to justify a dismissal of the application and it is not at all necessary to probe further into the matter. Unfortunately this is not the first time that a delay of this nature has occurred. On facts more or less similar we have already dismissed an appeal recently, vide 'Criminal Appeal No. 1454 of 1954 State v. Shah Mohd., decided by my learned brother and myself on 3-ll-1954 (H)' and there appears to be no reason to accord a different treatment to this application. Unfortunately cases of this type are increasing and it is presumed that in such cases an application on behalf of the Government under Section 5 would be granted. The law has already allowed an

ex-tended period of six months to the Government for appeal as against a limited period of sixty days allowed to a private indivdual. The period of limitation is deliberately made longer by the legislature in the case of the Government considering that the matter has to go through various stages before a decision on the question is taken. For this reason the law has very properly made no difference between the mode of approach by the Court to an application under Section 5 by the Government and by a private party.

39. For the above reasons I am of opinion that the application to condone the delay must be dismissed and the memorandum of appeal refected.

Desai, J.

40. This appeal was filed within time. But the memorandum of appeal was accompanied by a copy of the judgment appealed from which was not certified to be a true copy. It is laid down in Section 419, Criminal P. C., that-

'Every appeal shall be made in the form of a petition. .. ....and every petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against."

was contended by Sri D.P. Uniyal that full compliance with the provision was made. His argument was that this provision does not require a certified copy to accompany a memorandum of appeal.

41. The 'fundamental question is what is meant by the word "copy" used in Section 419? That it means an imitation, transcript or reproduction of an original cannot be doubted, but does it also mean "certified copy" or "attested copy" or "authenticated copy"? According to none of the dictionaries including law lexicons does the word mean a certified copy. According to Bouvier "copy" means "a true transcript of an original writing." He interprets "examined copies" as those which have been compared with the original or with an official record thereof. Tomlins says that "copy" is "in a legal sense the transcript of an original writing; as the copy of a patent, of a charter, deed, etc.," and the same meaning is given by Wharton. I have also consulted Murray's and Webster's Dictionaries and Corpus Juris Secundum, Vol. 18, pjge 130. None of these authorities includes among the various meanings of the word "certified or attested or authenticated copy". The idea of correctness is there but not of the guarantee that it is correct. The word has no legal or technical meaning; Burrows and Mozley do not even notice the word. There is, therefore, no doubt that the word, without any adjective such as "certified", "examined", "authenticated" or "attested", does not mean a certified copy; so long as a document reproduces a judgment letter by letter, it is its copy and according to all canons' of interpretations of statutes, if it accompanies a memorandum of appeal Section 419 is duly complied with.

No question of construction or interpretation arises because the word "copy" has only one meaning in this, context and the court's duty is to understand it in that meaning. The court is called upon to construe a word only if its meaning is uncertain or ambiguous, then it can consider the Legislature's intention, practice and other facts; but when a word has only one meaning or its meaning is certain,

the court's duty is exhausted by giving that meaning to it. Had the word thus two meanings, (1) "a reproduction of the original" and (2) "a transcript or re-production of an original or attested to be true", then only would the question arise which of the meanings the word bears in a particular context. "A transcript or re-production of an original, certified or attested to be true" is not one of the meanings of the word according to any authority and, therefore, there is no ambiguity in the meaning of the word.

If a copy is required to be certified, the Legislature must say so expressly; otherwise it is impossible for a court to say that a copy is not a copy unless it is certified or attested to be true. A certified copy is nothing but a copy bearing a certificate of its being signed by some official; the certificate merely guarantees that it is a true copy. The word "certified" is an adjective which qualifies the word copy". There are some copies which are certified copies and there are others which are not; but all are copies,

42. The word "copy" is used in the Code in several sections and there is no indication that in any of them it means "certified copy". If the word does not mean "certified copy" in some sections, it follows that it does not mean "certified copy" in Section 419 also. Sections 87 and 134(2) provide for the affixation of a copy of a proclamation to some conspicuous, place. Section 145(3) provides for the service of a copy of an order. There is nothing to suggest that these copies must be certified copies. Section 162 provides for furnishing the accused with a copy of a statement made to the police. Sections 165(5), 167(1) and (4), 373, 379, 422 and 539 (b) provide for sending copies of certain documents to certain officers of the State; they are not required to be certified copies.

Under Section 210 a copy of the charge should be given to the accused. Sections 371 & 548 lay down that a copy of the judgment or the heads of charge or of an order or of any deposition should be furnished on demand to the accused or any other person aflected by the judgment or order. Here also the word "certified" is not used with the word "copy". Section 521 refers to destruction of copies of obscene or libellous documents; here there can possibly be no question of the copies being certified copies. On the other hand, where a certified document is required to be issued or given, the Code specifically provides for it. Sections 425 and 442 provide for the appellate courts' or revision courts' certifying their judgments to the subordinate courts. Section 428 requires a subordinate court to certify the evidence to the appellate court. Section 511(a) and (b) require the production of certified extracts of previous convictions.

43. The word "copy" is used in several provisions of the Code of Civil Procedure also" Under "Order 7, Rule 17 a copy of an entry in the account-book is to be filed with a plaint and it is for the court to examine and compare it "with the original. Obviously, the copy that is required to be filed is not a certified copy; that is why it is the court's duty to compare it with the original. Similarly in Order 13, Rule 5 it is laid down that, when an original account-book is produced in evidence, a copy of the relevant entry in it should be furnished; and the court will compare and certify it; here also the word "copy" cannot possibly mean "certified copy". Order 20, Rule 20 and Order 41, Rule 36 expressly require certified copies of judgments and decrees to be furnished to the parties on their application. Even if the word "certified" was not used in these provisions, the copy issued by the Court would bear a certificate of correctness. But the use of the adjective makes it clear that a "copy" does not

mean "certified copy" even when it is furnished to a party on his application.

Order 21, Rule 11(3) authorises the Court to require an applicant for execution of a decree to produce "a certified copy of the decree" Rule 14 of the same order authorises the court to require the applicant to produce a certified extract from a register maintained by the Collector. The use of the word "certified" suggests that the Legislature thought that if it were not used, it would be sufficient compliance if an uncertified copy was produced. Order 41, Rule 1, which is a provision corresponding to Section 419, Criminal P. C., simply speaks of a copy of the judgment or order. When it is compared with the other provisions which expressly speak of "certified" copy and extract, it becomes obvious that it does not require a certified copy of a judgment or decree. Otherwise it is not understood why the Legislature did not use the word "certified" there as it has done in other provisions. Order 41, Rule 37 requires a certified copy of the judgment to be sent to the lower court. Order 45, Rule 8 refers to an authenticated copy,

44. In view of the Legislature's using the word "copy" in some provisions and the words 'certified copy" or "authenticated copy" in other provisions, there is no justification for interpreting the word "copy" as "certified copy". The Code of Criminal Procedure does not require certified copies of judgments to be furnished to the parties on their application as the Code of Civil Procedure does; but that makes no difference because the copies furnished by criminal Courts would necessarily bear the certificate of correctness, Thus the copies of judgments and decrees that are furnished to the parties by the Courts are certified copies. But there is no provision in either of the Codes enjoining upon the parties to file those very copies with the memoranda of appeal.

In the absence of any provision making it incumbent upon an appellant to file with his memorandum of appeal a copy of the judgment or decree obtained from the Court itself, the fact that Courts are required to furnish certified copies does not lead to the inference that only certified copies should be filed with memoranda of appeal. Under Section 12, Limitation Act the time requisite for obtaining a copy of the decree or order appealed from should be excluded when computing the period of limitation. This may suggest that the copy is to be obtained from a court and that consequently it must be a certified copy. But this provision cannot be construed to make it obligatory upon an appellant to file with the memorandum of appeal a copy obtained from Court.

If a copy is obtained from Court, the time requisite for obtaining it will be excluded. If a copy made privately is filed with a memorandum of appeal, no time may be excluded or the appellate Court may decide in some way that so much time was required in obtaining the privately prepared copy. The appellate Court would not be justified in refusing to accept the memorandum of appeal on the ground that it is accompanied by a privately prepared copy and that the Limitation Act makes no provision for determining how much time was required for obtaining it. How an appeal should be filed and what documents are to accompany a memorandum of appeal are matters of procedure to be found in the Code of Civil Procedure and not in the Limitation Act.

45. A certified copy is a creation of the Evidence Act. Secondary evidence may be given of the contents of a public document such as a judgment, an order or a decree. Secondary evidence of a public document is its certified copy. Every public officer having the custody of a public document,

which any person has a right to inspect, is bound to 'give that person on demand a copy of it* * * * * together with a certificate written at the foot of such copy that it is a true copy of such document * * * * * and such certificate shall be dated the subscribed by such officer with his name and his official title * * * * *, and such copies so certified shall be called certified copies;" see Section 76.

This provision makes it clear that a certified copy is a particular kind of a copy, e.g., a copy bearing a certificate of its being true. The certificate is not required to convert the document into a copy; it is a copy, if it is a re-production of the original letter by letter, whether somebody certifies it to be a "true copy or not. Therefore, a certificate of correctness is not a necessary requirement of a copy.

Where only a copy is required to be produced, it is not open to a Court, which has got no legislative powers, to say that it must be a certified copy. If a certified copy is required, it is for the Legislature to say so. It is provided in Section 77, Evidence Act that certified copies may be produced in proof the contents of the public documents. This does not mean that a copy of a judgment, decree or order that is required under the Codes to be filed with a memorandum of appeal should be a certified copy. The copy of a judgment, order or decree that is required to be filed with a memorandum of appeal is not required to be filed in proof of the contents of the judgment, order or decree. There is no question of producing any evidence in proof of anything in an appellate proceeding. Moreover, there is no question of proving anything at the time of filing an appeal. The appellate Court has the power of dispensing with a copy of a judgment, etc. Had it been required for proving something, there would have been no provision for its being dispensed with. There must be some reasons for the provision that a copy of the judgment etc,, must accompany a memorandum of appeal, but proving the contents of the judgment etc., is not one of them.

It is not laid down in any law that an appellant must prove the contents of the judgment etc., from which he files an appeal. He challenges the correctness of the judgment etc. He wants it to be get aside. When he does not want to derive any benefit from it, there is no occasion for his being called upon to prove its contents. It is for the appellate court to decide whether he has a right to file an appeal or not. If subsequently it is discovered that he had no right to appeal, his appeal would be dismissed on that ground. If an appellate court must see a copy of a judgment etc., in order to ascertain whether the appeal lies at all, or is filed within time, or is filed in the proper court, it can ascertain it as much from an ordinary copy as from a certified copy. If it wants to be satisfied that the copy is a true copy, it can examine the appellant or any witness who has prepared it. That a copy is a true copy can be proved by any person who has prepared it or who compares it with the original. There is nothing in the law to bar a copy from being proved to be a true copy in this manner. Neither Section 65 nor Section 77 bars its proof.

It should be noted that the question is of proving a copy to be correct and not of proving the contents of a judgment etc., and the contents of a judgment etc., cannot be proved except by a certified copy, but the correctness of a copy can be proved by oral evidence of anyone who has prepared or compared it. If an appellant seeks an interim relief during the pendency, of an appeal, the appellate Court may not grant it unless it is satisfied by proper evidence that a particular judgment has been passed against him and for this purpose may call upon the appellant to produce a certified copy of it. But that would be subsequent to the filing of the appeal. The practice is that

appellants file certified copies of judgments, orders or decrees with memoranda of appeal. But that is not because the law requires certified copies but because generally only certified copies are available to them.

A party who inspects a record is prohibited from making a copy. He can, therefore, have a privately prepared copy only if it is prepared from a certified copy or is prepared as the judgment is being delivered in open Court. There is a danger in his filing a privately prepared copy of the judgment etc., because if it is found to be incorrect, that is, if it is not an exact copy, the appeal may be rejected on the ground that the memorandum was not accompanied by a copy. In any case, whether the copy required to be filed with a memorandum of appeal should be a certified copy or may be an uncertified copy, depends upon the provisions of law and not upon the practice.

46. There is no reported case interpreting the words "a copy" occurring in Section 419, Criminal P. C., but the same words occurring in Order 41, Rule 1 of the Code of Civil Procedure have been interpreted in AIR 1929 Lah 771 (G), to mean a certified copy. In that case a privately prepared copy of a judgment was filed with a memorandum of appeal and if was contended that it was a sufficient compliance with the provision of Order 41, Rule 1. The learned Judges rejected the contention, observing that they were called upon to examine a copy of the judgment appealed from with a view to ascertain whether the conclusions arrived at by the subordinate Court were correct, that in order to do so it was necessary for them to see the judgment itself because Section 91, Evidence Act forbade the admission of oral evidence to prove the contents of a document, that consequently the original judgment or secondary evidence (which undoubtedly consists of only a certified copy) should be filed with a memorandum of appeal, and that the word "copy" in the provision clearly means a copy duly certified under the provisions of the Evidence Act. .

With great respect to the learned Judges I cannot agree with the reasons given by them. An appellate Court is not required to decide at the moment when an appeal is filed whether the conclusions of the subordinate Court were correct or not. If a memorandum is accompanied by an uncertified copy and the copy does not satisfy the appellate court that the conclusions of the subordinate court were erroneous, it would dismiss the appeal. If it thinks that the conclusions might be erroneous, it would issue notice to the respondent and, if the copy was not correct, the respondent would bring the fact to its notice. The reference to Ss. 91 and 76, Evidence Act was unnecessary. If the Legislature thought that a memorandum of appeal should be accompanied by some document showing the contents of the judgment appealed from, it has itself laid down that a copy of the judgment would do. So even if there were a question of" producing evidence to prove the contents of a judgment, the Legislature has provided that a copy of the judgment would be sufficient evidence. The provisions of the Evidence Act cannot override the provision that any copy of the judgment would do to prove its contents. The learned Judges have not discussed the meaning of the word "copy" at all; they appear to have held that "copy" means a copy duly certified under the Evidence Act merely because of their opinion that a memorandum must be accompanied by such a copy. This is hardly distinguishable from judicial legislation. The learned Judges did not take into consideration the previous decision, albeit of a single Judge, of the same High Court, viz., AIR 1926 Lah 404 (F). A memorandum of second appeal was accompanied by an uncertified copy of the first court's judgment, the excuse given being that an application for a certified copy of it had failed

because the trial court's record could not be traced. Addison J. ruled that "there has been a sufficient compliance with the law in these circumstances. The words "in these circumstances" create a difficulty inasmuch as they show that an uncertified copy can be filed if the original judgment is lost or misplaced.

Whether the word "copy" means a certified copy or any true reproduction of the original does not depend upon whether the original is available or lost. The proposition that "a document is a copy of another if the latter is lost or destroyed, and is not a copy of it if it is available is not supported by law or reason. The availability or non-availability of a document may affect the mode of proving its contents, but it cannot have any bearing on the question whether. another document is a copy or not. In -- 'Ramakrishna Pillai v. Muthuperumal Pillai', AIR 1916 Mad 1165 (I), it was' assumed by the learned Judges that Order 41, Rule 5 requires a certified copy. The question before them was not whether the word "copy" means a certified copy or any true reproduction of the original. - They had to decide whether the copy should be a printed copy or not. The High Court of Rangoon has amended Order 41, Rule I and provided for the filing of certified copies of the judgment and decree appealed from. The obvious inference from this is that in the absence of the word "certified" any un-certified copy would do. The question raised and decided in -- 'Sher Dil Khan v. Samundar Khan', 432 Ind Cas 3 (Lah) (J) was quite different. No other cases were referred to us.

47. My conclusion is that in the absence of any such qualification as "certified", "authenticated" or "granted by the Court", it cannot be said that the word copy in Section 419 of the Code of Criminal Pro cedure means "certified copy". The appeal was, therefore, presented in the manner laid down in that section within time.

48. I agree with my brother Beg that if the appeal was incomplete, no case is made out for extending the benefit of Section 5, Limitation Act to the State and that this application for the same deserves to be dismissed. (On difference between the two Judges the case was laid before a third Judge whose judgment is as follows):

Raghubar Dayal J.

49. The sole point before me for expressing an opinion is whether Section 419, Criminal P. C., requires, the memorandum of appeal to be accompanied by a certified eopy of the judgment or order appealed against or by uncertified copy of the judgment or order appealed against.

50. It is not disputed that the dietionary meaning of the word "copy" is "a true transcript of an original writing". It follows, therefore, that the copy accompanying the memorandum of appeal should be a true transcript of the original judgment.

The Court to whom the memorandum of appeal is presented should be in a position to know that what accompanies the memorandum of appeal is a true transcript of the original judgment. This means that the appellant should satisfy the court or should prove to the satisfaction of the court that the copy accompanying the memorandum of appeal reproduces correctly what is contained in the original judgment.

Section 64, Evidence Act provides that documents must be proved by primary evidence except in the cases thereafter mentioned. Section 65, Clause (e),. Evidence Act allows secondary evidence, which includes certified copies, to be given of the existence, condition or contents of a public document. It is further provided in Section 65 that a certified copy of the document but no other kind of secondary evidence is admissible. What is a certified copy is defined in Section 76, Evidence Act. It follows that when the appellant has to prove to the satisfaction of the Court what the judgment appealed against is, he must produce a certified copy of the judgment. I am, therefore, of opinion that the word "copy" in Section 419, Criminal P. C. must mean a certified copy,

51. I order that the aforesaid opinion be laid before the Court concerned.

BY THE COURT

52. In view of the opinion of the third Judge, we hold that the memorandum of appeal was not accompanied by a copy within the meaning of Section 419, Criminal P. C. By the time a copy, was filed in the appeal, the period of limitation had already expired and we have rejected the application for extension of the period of limitation. Consequently, we hold that the appeal was time barred and dismiss it as such,

53. We certify that this is a fit case for appeal to the Supreme Court.