

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARHCRM-2978 of 2015 IN/AND
CRA-S-421-SB of 2015 (O&M)
Date of Decision:21.5.2015

Chaman Singh

....Appellant

Versus

State of U.T., Chandigarh

....Respondent

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. R.N. Ojha, Advocate for the applicant-appellant.

Mr. Sukant Gupta, AAP, U.T., Chandigarh for the respondent.

NAVITA SINGH, J.**CRM-2978 of 2015**

1. There is delay of 115 days in filing the present appeal. It was pleaded that out of the penalty of Rs.1,00,000/- imposed by the applicant, who had stood surety for one Dharam Pal during the pendency of his appeal against conviction and sentence, an amount of Rs.50,000/- was deposited. The applicant made a request to Dharam Pal to pay the remaining part of the penalty, who assured to do so, but the applicant came to know later on that the amount was not deposited. Also he was unable to arrange the funds for filing the appeal.

2. Even if it be taken that the applicant had made a request to the convict for making payment of the balance amount of penalty, the responsibility, in any case, lay on the applicant.

3. The delay in filing this application, which is almost of four months, can even otherwise not be condoned because of the fact that the applicant had earlier filed an appeal against the order of imposing of penalty on him and that appeal was also filed after huge delay of 1035 days, which was not condoned. The applicant made up a story in the present application for getting the delay condoned.

4. The application is dismissed.

CRA-S-421-SB of 2015

1. Since the delay in filing the appeal has not been condoned, the appeal is to be rejected out-rightly.

2. In any case, on merit also, it is not being allowed because in the order passed by this Court in CRA-S-2620-SB of 2012, the appellant had filed an application for condonation of delay, which was dismissed and also on merit, the appeal was dismissed observing that there was no ground for remitting the amount of surety bond or any part thereof, because the convict had absconded and was declared proclaimed offender. Since it already stood decided that no part of the bond amount was to be remitted, the appellant could not have gotten any relief by filing an application under Section 446 (3) of the Code of Criminal Procedure (Cr.P.C. for short). Though the application filed by the appellant for waiving the penalty or recalling the order of attachment of a part of the salary was dismissed on technical ground by the court below, yet the result would remain the same if the case is remanded for deciding the application. It had already been held by this Court that the appellant was not entitled to reduction in the amount of penalty. Therefore, the Additional Sessions Judge could not have passed a different order.

3. Counsel for the appellant relied on certain Single Bench judgments of this Court and Allahabad High Court, where the penalty was waived of or reduced under Section 446 (3) Cr.P.C. Those need not be referred to as this Court is not bound to follow the view and even otherwise there is no dispute about the powers of the courts to waive or reduce the penalty on an application made under Section 446 (3) Cr.P.C.

4. The appeal is dismissed.

5. It is not understandable as to why the Additional Sessions Judge wrote in the impugned order that the order of penalty having been passed by his predecessor, it could not be reviewed by him being the successor. If one officer succeeds the other, the review application was to be dealt with by the successor court as it would be deemed to have been filed in the same court. The application once filed, had to be disposed of in accordance with law, though there is no provision for review in Cr.P.C.

6. Copy of this order be sent to Mr. Paramjeet Singh, Additional Sessions Judge at his present place of posting.

(NAVITA SINGH)
JUDGE

21.5.2015
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