

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.***

***Crl. Misc. No.3628 of 2014 and
Crl. Misc. No.A-169-MA of 2014
Date of Decision: 08.09.2015***

Balkar Singh

....Applicant

Versus

State of Punjab and another

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. Narinder S. Lucky, Advocate
for the applicant.

DAYA CHAUDHARY, J. (ORAL)

The present application has been filed under Section 378(4) Cr.P.C for grant of leave to appeal against the judgment of acquittal dated 12.01.2011 passed by the Judicial Magistrate Ist Class, Nakodar, whereby, the accused has been acquitted of the charge under Section 138 of the Negotiable Instruments Act, 1881.

There is delay of 1113 days in filing of the present application.

The application for condonation of delay has been supported by an affidavit of the applicant, wherein, it has been mentioned that under wrong impression, he has filed Criminal Appeal before the Sessions Court at Jalandhar to challenge the judgment of acquittal dated 12.01.2011 passed by the Judicial Magistrate Ist Class, Nakodar, whereas, the appeal was maintainable before this Court under Section 378 Cr.P.C. The appeal

was decided on merits vide order dated 22.08.2012. Thereafter, Criminal Revision No.4183 of 2012 was filed by the applicant against the aforesaid order, which was dismissed as withdrawn with liberty to file appeal against the judgment dated 12.01.2011 before this Court. The delay of 1113 days has occurred, which is un-intentional and beyond the control of the applicant.

Learned counsel for the applicant prays for condonation of delay as per grounds mentioned in the application.

Admittedly, the judgment of acquittal was passed on 12.01.2011 by the Judicial Magistrate 1st Class, Nakodar and thereafter, the applicant availed wrong remedy of filing appeal as well as revision petition and hence, the delay occurred. Learned counsel for the applicant has not been able to show any document as to when the appeal before the lower Court was filed and when it was decided. Even nothing has been mentioned with regard to filing of revision petition or its dismissal or withdrawal neither in the arguments nor in the application for condonation of delay. The details of filing of appeal before the lower Court or filing of revision petition before this Court have not been mentioned in the application. There is delay of 1113 days in filing of the application but the application is totally vague and non-satisfactory reason has been given therein. Only it has been mentioned that wrong remedy was availed and hence, the delay has occurred. This is not a case where the delay is of days or months or a year but the same is of years' together and nothing has been said in the application with regard to the same and as such, the same is liable to be dismissed on this ground.

Moreover, on merits also, there are contradictions and discrepancies in the statement of complainant himself as at one place, he is stating that the cheque, in dispute, was issued in lieu of debt taken by

accused, whereas, on the other hand, he has stated in the civil suit that the cheque was issued for the value of crop sold by him to the accused. He has also admitted that earlier the accused has issued a cheque of ₹ one lac to him on 14.06.2004 but its payment has not been effected. In case, the version of the complainant is believed to be correct then it is not a case whereby Section 138 of the Negotiable Instruments Act could be invoked.

Although, the argument has been raised by learned counsel for the applicant that there is presumption attached to Exhibit 'P' under Section 139 of the Negotiable Instruments Act but the existence of legally recoverable debt is not a matter of presumption under the provisions of the Act. A presumption is raised in favour of holder of the cheque that the cheque has been issued for discharge of any debt or any other liability.

In the present case, the complainant has failed to prove the existence of any legally enforceable debt. Accordingly, the complainant has failed to prove his case against the accused beyond reasonable doubt and the complaint of the applicant was dismissed.

A specific finding has been given by the trial Court, wherein, the arguments raised by the applicant have been discussed and the detailed order has been passed.

Accordingly, in view of the facts as mentioned above, there is no merit in the contentions raised by learned counsel for the applicant and as such, the present application for grant of leave to appeal is dismissed not only on delay but on merits as well.

08.09.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE