

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-15900-2014
Date of decision: 16.7.2015

Gurpreet Kaur

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr. Gaurav Singla, Advocate for the petitioner.

Mr. Daljeet Singh Virk, AAG, Punjab.

RAMESHWAR SINGH MALIK, J. (Oral)

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks quashing of the impugned order dated 19.3.2014 passed by the learned Additional Sessions Judge, Sangrur, whereby her revision petition was dismissed only on the ground of delay, thereby upholding the order dated 1.5.2013 passed by the learned Judicial Magistrate 1st Class, Sunam ('JMIC' for short), framing the charges against the petitioner in a complaint case.

Notice of motion was issued.

Learned counsel for contesting respondent No.2 appeared and sought time for filing reply. However, no reply was filed.

Learned counsel for the petitioner submits that the learned Additional Sessions Judge proceeded on a misconceived approach, while dismissing the revision petition of the petitioner only on the ground of delay. He further submits that the delay was also not on higher side because

it was just 65 days' delay in filing the revision petition against, the order dated 1.5.2013 passed by JMIC, Sunam. He prays for setting aside the impugned order, by allowing the present petition.

On the other hand, learned counsel for contesting respondent No.2 submits that petitioner proceeded on a casual approach, while filing revision petition before the learned Additional Sessions Judge and he committed no error of law in passing the impugned order, thereby declining to condone the delay. He further submits that petitioner was under legal obligation to explain the delay of each day but since the application for condonation of delay under Section 5 of the Limitation Act was drafted in a casual manner, it was only the petitioner who was to suffer and no fault can be found with the impugned order, in this regard. He prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in view of the peculiar fact situation of the present case, instant one has been found to be a fit case warranting exercise of inherent jurisdiction under Section 482 Cr.P.C., at the hands of this Court, for the following more than one reasons.

It is the settled principle of law that the courts of law must make an endeavour to decide the matter on merits, instead of deciding it on technicalities, including the delay, until and unless the delay is inordinately long, intentional and totally unexplained. It is equally true that the law of limitation can not be given a complete go-bye. Parties to the litigation are expected to pursue their cases diligently and with bonafide intention. In this

view of the matter, neither it is desirable nor appropriate to lay down any straight jacket formula, in this regard. Each case is to be considered and decided on the basis of its peculiar facts and circumstances.

Reverting back to the facts of the present case, it is undisputed on record that revision petition filed by the petitioner, before the learned Additional Sessions Judge, was delayed by 65 days. Although the application drafted by the learned counsel, under Section 5 of the Limitation Act, seeking condonation of delay, was not very happily worded, yet the above-said principle of law ought not have been ignored by the learned Additional Sessions Judge also. It is so said because the courts of law, in our justice delivery system, are expected to proceed on a judicious approach, for doing complete and substantial justice between the parties. This object was not kept in view by the learned Additional Sessions Judge, while passing the impugned order. Thus, the impugned order cannot be sustained.

It was pleaded as well as argued before the learned Additional Sessions Judge, on behalf of the petitioner, that they were rustic villagers. It is also a matter of record that the revision petition filed by the petitioner before the learned Additional Sessions Judge, was suffering from the delay of 65 days only, which cannot be said to be an inordinate long delay. Further, by causing delay of 65 days by the petitioners, no valuable or indefeasible right had accrued in favour of the respondent. However, since the learned Additional Sessions Judge proceeded on an erroneous approach, while not appreciating these glaring and undisputed facts, as well as the above-said principle of law, at the time of passing the impugned order, the same cannot be sustained, for this reason also.

It is equally important to note that in the normal circumstances, until and unless contrary fact situation is pleaded and proved, nobody gains any advantage in delaying the matter. This is also one of the relevant considerations for the courts of law, while considering and deciding the application under Section 5 of the Limitation Act. However, the learned Additional Sessions Judge also failed to appreciate this aspect of the matter.

So far as present case is concerned, it was not even alleged on behalf of the respondent that petitioner caused the delay of 65 days intentionally or he was going to gain anything, while causing the delay. It was also not pleaded or argued before this Court, on behalf of the respondent, that any valuable right has accrued in favour of the respondent, because of the delay caused by the petitioner. Since this aspect has also not been kept in view by the learned Additional Sessions Judge, while passing the impugned judgment, the same is liable to be set aside, for this reason as well.

Another relevant factor in deciding the application under Section 5 of the Limitation Act, which has again been ignored by the learned Additional Sessions Judge, without assigning any reason much less cogent reasons, was that no prejudice was going to be caused to the respondent, in condoning the delay of 65 days in favour of the petitioner. On the other hand, it was only the petitioner who was bound to suffer a prejudice because of dismissal of the revision petition, only on the ground of delay, as has been done in the present case.

Yet another relevant principle of law, which is clearly attracted in the present case and has been overlooked by the learned Additional Sessions Judge, is that the justice is not only to be done but it should also

seem to have been done. Since the learned Additional Sessions Judge has proceeded on a misconceived approach, while not keeping this principle of law in view, the impugned judgment has resulted in miscarriage of justice and cannot be sustained in law.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view, that with a view to avoid the abuse of process of law and also for advancing the cause of justice, the present petition deserves to be allowed.

Consequently, the impugned order dated 19.3.2014 passed by the learned Additional Sessions Judge, Sangrur (Annexure P-6) is hereby set aside. Delay of 65 days, caused by the petitioner in approaching the learned Additional Sessions Judge, by way of revision petition, is also condoned. The matter is remitted back to the learned Additional Sessions Judge, Sangrur, for deciding revision petition of the petitioner afresh on merits, by passing an appropriate order, in accordance with law. Parties are directed to appear before the learned Additional Sessions Judge, Sangrur, on 21.8.2015.

Resultantly, with the above-said observations made and directions issued, the present petition stands allowed, however, with no order as to costs.

16.7.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE