

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

**Criminal Misc.No.M-33962 of 2015
Date of Decision: October 05, 2015**

P.D.Sood

...Petitioner

Versus

Smt.Jagdev Kaur & Anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.A.D.S.Sukhija, Advocate,
for the petitioner.

Naresh Kumar Sanghi, J.(Oral)

Challenge in the present petition, filed under Section 482, Cr.P.C., is to the order dated 18.08.2015 passed by learned Additional Sessions Judge, Chandigarh, whereby the application filed under Section 5 of the Limitation Act filed by the respondent, Jagdev Kaur (respondent) had been allowed and the delay of 11 months in filing the appeal was condoned.

Learned counsel contends that the petitioner was acquitted by learned trial Court vide its order dated 30.11.2013 (Annexure P-1) and thereafter, the respondent/complainant filed an appeal along with an application under Section 5 of the Limitation Act for condonation of delay of 11 months in filing the said appeal. He further submits that without watching the interest of the petitioner/accused, learned Appellate Court has condoned such a huge delay.

I have heard learned counsel for the petitioner and with his able assistance gone through the material available on record.

There is no dispute regarding the fact that the appeal against acquittal was filed against the petitioner after a delay of about 11 months. The application under Section 5 of the Limitation Act for condonation of delay of the said appeal was also presented. Learned Appellate Court allowed the application primarily on the ground that the respondent/complainant had also filed the appeal against acquittal challenging judgment of acquittal passed by learned trial Court against the co-accused of the petitioner and the said appeal was pending, therefore, the appeal against the petitioner and his co-accused were to be heard and decided on merits together. While affirming its opinion, learned Appellate Court placed reliance on the judgment passed by Hon'ble the Supreme Court in the matter of **Improvement Trust, Ludhiana vs. Ujjagar Singh, 2010(3) CCC 374 SC.**

There is no second opinion regarding the fact that the Court while considering the condonation of delay has to watch the interest of both the parties. On the one hand, while hearing the application for condonation of delay, the Court has to see the intention of the applicant in filing the application while at the same time, the Court has to consider the prejudice to be caused to the other party in allowing the application for condonation of delay. The issue of condonation of delay has to be decided after taking

into consideration the overall facts of the case. Only on one issue neither the application for condonation of delay can be allowed nor dismissed. In the present case, the appeal against acquittal of co-accused of the petitioner had already been entertained by the Appellate Court; the applicant had alleged that due to typographical mistake in the memo of parties, the name of the petitioner was left and that merely on the ground of filing of appeal after expiry of limitation the appellant cannot be denied the hearing on merits, therefore, the appeal filed by the respondent/complainant against the petitioner has to be decided on merits along with appeal against his co-accused. The cogent reasons have been given by learned Additional Sessions Judge, Chandigarh while allowing the application filed by the respondent/complainant.

No ground for interference by this Court while exercising the powers under Section 482, Cr.P.C., is made out.

Dismissed.

October 05,2015
seema

(Naresh Kumar Sanghi)
Judge