

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-35155 of 2014
Date of Decision: February 05, 2015

Rajesh Kumar Gupta and another

...Petitioners

VERSUS

Surinder Pathak

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vaibhav Sehgal, Advocate
for the petitioners.

Mr.Nitin Thatai, Advocate
for the respondent.

INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. for quashing of impugned order dated 19.09.2014 passed by learned Addl. Sessions Judge, Ludhiana vide which application moved by the petitioner under Section 5 of the Limitation Act for condonation of delay in the filing the revision, has been dismissed and the revision preferred by the petitioners against the summoning order has also been dismissed.

Notice of motion was issued in this case and learned counsel for the respondent appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that in the complaint case, both the present petitioners have been summoned and they filed joint revision

petition against the summoning order before the Session Court. Learned Addl. Sessions Judge, Ludhiana vide impugned order dated 19.09.2014, dismissed the application under Section 5 of the Limitation Act for condoning delay of 34 days in filing the revision. As argued, the summoning order was passed by learned JMJC, Ludhiana in complaint filed by present respondent under Sections 499/500 IPC summoning both the petitioners on 25.09.2012 for 26.10.2012. As per the petitioners, they came to know regarding the summoning order on 20.11.2012. There is no dispute regarding this fact between the parties. The petitioners filed application for certified copy of the summoning order on 19.02.2013 after 88 days of the knowledge of the impugned order and then filed the revision petition on 25.03.2013. After deducting 90 days' time and also the time taken for preparing the certified copy of the impugned order, it was argued that there is delay of only 34 days. Learned Addl. Sessions Judge, Ludhiana dismissed the application.

It is settled law that law regarding condoning the delay is liberal one. The Court is to do substantial justice between the parties and not to go into the technicalities of law. There is nothing on the record nor argued that, in any way, the petitioners with malafide intentions filed the revision petition late. There is also nothing that by filing the revision petition late, the petitioners, in any way, have been benefitted. The delay is only of 34 days, which, in no way, can be held to delay the proceedings.

The Hon'ble Supreme Court in the judgment passed in

Esha Bhattachargee vs. Managing Committee of **Raghunathpur Nafar Academy and others, 2013 (4) RCR (Civil) 785** has held as under:-

“15. From the aforesaid authorities the principles that can broadly be culled out are:

- i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*
- ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.*
- iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*
- iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*
- v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
- vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*
- vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*
- viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

- ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*
- x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*
- xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*
- xii) *The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*
- xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

In view of the above law laid down by the Hon'ble Supreme Court, I find that it is a fit case where the delay should have been condoned by applying liberal approach in this case. Therefore, the impugned order dated 19.09.2014 passed by learned Addl. Sessions Judge, Ludhiana is not as per law and the same is set aside.

Learned Addl. Sessions Judge, Ludhiana is directed to restore the revision petition and to decide the same on merits.

Therefore, finding merit in the present petition, the same is allowed.

February 05, 2015
Vgulati

(INDERJIT SINGH)
JUDGE