

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

CRM-M-7056-2015

Date of decision: 26.05.2015

Nitin Gupta

... Petitioner

Vs.

Hemlata @ Harshta

... Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Munish Gupta, Advocate
for the petitioner.

Ms. Divya Sharma, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J. (ORAL):

The present petition, under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), is directed against the order dated 03.01.2015, passed by learned Additional Sessions Judge, Palwal, whereby revision petition filed by respondent-wife, along with application for condonation of delay of one year and about three months, was allowed without first condoning the delay by disposing of the application.

Notice of motion was issued.

Reply by way of affidavit dated 25.05.2015 filed on behalf of the respondent in the Court today, is taken on record and copy thereof has been supplied to learned counsel for the petitioner.

Learned counsel for the petitioner raised only one argument that the impugned order dated 03.01.2015 (Annexure P-15) passed by the learned Addl. Sessions Judge, Palwal was an order without jurisdiction because the delay of more than one year and about three months in the revision petition filed by the respondent was not condoned, before passing the impugned order. He further submits that in the absence of condonation of abovesaid inordinate long delay, there would be no revision petition before the Court for rendering its decision. He prays for allowing the present petition, by setting aside the impugned order passed by the learned Addl. Sessions Judge, Palwal.

Faced with the above, learned counsel for the respondent fairly states that she has instructions to say that in spite of inspection of the relevant judicial record, no such order has been found available on the record of the case, whereby the learned Addl. Sessions, Palwal might have condoned the delay, before passing the present impugned order dated 03.01.2015. However, she prays for dismissal of the present petition on the ground that the impugned order was perfectly justified on merits of the case.

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 rival contentions raised, this Court is of the considered opinion that the impugned order dated 03.01.2015 passed by learned Addl. Sessions Judge, Palwal is unsustainable in law and present petition deserves to be allowed, for the following more than one reasons.

It is undisputed between the parties that the revision petition filed by the respondent-wife was delayed by one year and about three months. It is also not in dispute that the respondent-wife has moved an application for condonation of delay. It has also gone undisputed on record that before passing the impugned order dated 03.01.2015, learned Addl. Sessions Judge, Palwal did not condone the delay, in filing the revision petition by the respondent-wife. Having said that, this Court feels no hesitation to conclude that the learned revisional Court has exceeded its jurisdiction, while passing the impugned order. It is so said because until and unless the delay was condoned, the learned Court would have no jurisdiction to pass the impugned order dated 03.01.2015 (Annexure P-15) and the same cannot be sustained.

Even if the respondent-wife was having a good case on merits, as claimed by her counsel before this Court, still the learned revisional Court was duty bound to decide the application for condonation of delay first, before proceeding with the matter to decide it on merits. Learned counsel for the petitioner has been found justified to contend that in the absence of condonation of delay, there would be no

revision before the revisional Court for rendering its decision on the merits of the case. Under these circumstances, it can be safely concluded that the learned revisional Court misdirected itself, while passing the impugned order, before deciding the application for condonation of delay. Thus, the impugned order cannot be sustained, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, present petition is allowed. Impugned order dated 03.01.2015 (Annexure P-15) is hereby set aside. Consequently, matter is remitted back to the learned revisional Court, Palwal for deciding the matter afresh. It goes without saying that the learned Addl. Sessions Judge shall decide the application for condonation of delay at the first instance and thereafter, he shall further proceed with the case to decide the same on merits. Parties are directed to appear before the learned Addl. Sessions Judge, Palwal on 14.07.2015.

Resultantly, with the abovesaid observations made and directions issued, present petition stands disposed of, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

26.05.2015
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