

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.2083 of 2013 (O&M)
Date of Decision: February 12, 2015

Roop Singh

...Petitioner

VERSUS

Chaman Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Gurcharan Dass, Advocate
for the petitioner.

Mr.Parminder Singh, Advocate
for respondents No.1 to 10.

Mr.Deepak Grewal, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

Petitioner has filed this revision petition under Section 401 Cr.P.C. challenging the order dated 21.02.2013 passed by learned Addl. Sessions Judge, Karnal.

Notice of motion was issued in this case and learned State counsel as well as learned counsel for respondent No.1 to 10 appeared, filed reply and contested the petition.

Learned counsel for the petitioner argued that an appeal was filed under section 372 Cr.P.C. against the judgment dated 20.01.2011 passed by learned Judicial Magistrate Ist Class, Karnal vide which, learned trial Court acquitted all the accused of the charges

framed against them. Along with the appeal, an application for condonation of delay of 30 days in filing the appeal has been filed and learned Addl. Sessions Judge, Karnala dismissed the said application.

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

From the record, I find that as per the allegation, there was only delay of 30 days in filing the revision petition. There is nothing on the record to show that the delay is with malafide intention. There is also nothing on the record to show that the complainant-petitioner is to be benefitted, in any way, with such a delay. Learned counsel for the petitioner also argued that this delay was caused due to sufficient reasons/cause and the Court is to adopt liberal approach while condoning such a short delay. He further argued that the delay was due to serious illness of a family member of the petitioner, rather who died after some time.

It is settled 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.

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 and if the delay is not condoned, the petitioner will suffer irreparable loss. Therefore, the impugned order dated 21.02.2013 passed by learned Addl. Sessions Judge, Karnal is not as per law and the same is set aside. The application for condonation of delay filed before learned Addl. Sessions Judge, Karnal as well as present revision petition are allowed.

Learned Addl. Sessions Judge, Karnal is directed to restore the appeal and to decide the same on merits, as per law.

February 12, 2015
Vgulati

(INDERJIT SINGH)
JUDGE