

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-1340-DB of 2015 (O&M)

Date of Decision : May 02, 2016

Inderjit Singh

.....Appellant

VERSUS

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present : Mr. A.A. Pathak, Advocate
for the applicant/appellant.

T.P.S. MANN, J.

Criminal Misc. Nos.29901-02 of 2015

Allowed, as prayed for.

Criminal Misc. No.29900 of 2015

Prayer made in the application is for condonation of delay of 1299 days in filing of the appeal.

Respondents No.2 and 3, namely, Sohan Singh and Amrik Singh, alongwith Piara Singh were tried for committing the offences punishable under Sections 420/465/467/468/471/120-B IPC. Vide judgment and order dated 14.6.2008, learned Judicial Magistrate 1st Class, Phillaur acquitted respondents No.2 and 3 of the charges against them. At the same time, Piara Singh was convicted under Sections 420, 465, 467, 468 and 471 IPC and sentenced to undergo rigorous imprisonment for

three years and to pay a total amount of Rs.1150/- as fine. The acquittal of respondents No.2 and 3 was challenged by the State by filing an appeal in the Court of Session. During its pendency, respondent No.2-Sohan Singh filed an application for dismissal of the appeal being barred by limitation as, according to him, the appeal was required to be filed within thirty days of the passing of the judgment dated 14.6.2008, whereas the appeal was actually filed on 7.10.2008. The said application was opposed by the State by filing the reply. Vide order dated 17.11.2011, learned Additional Sessions Judge (FTC), Jalandhar found merit in the application filed by respondent No.2-Sohan Singh by holding that the appeal was time barred, having been filed beyond the period of limitation. Accordingly, the appeal was dismissed being barred by time. The order dated 17.11.2011 has been challenged by the applicant by filing the aforementioned appeal. As this appeal had been filed after the expiry of the period of limitation, the present application was filed under Section 5 of the Limitation Act with the prayer that the delay of 1299 days in filing the appeal be condoned.

Learned counsel for the applicant has submitted that the aforementioned appeal was initially filed within the period of limitation. However, the Registry raised certain objections and, accordingly, returned the appeal. The appeal papers came to be misplaced by the Clerk to the counsel for the applicant/appellant and, therefore, the appeal could not be re-filed within prescribed time after removing the objections. Finally, the brief was found and the appeal came to be re-filed on 27.8.2015. In the process, there occurred a delay of 1299 days. Accordingly, the present application was filed for condonation of delay of 1299 days in filing/re-

filing the appeal. Prayer has, accordingly, been made for condoning the delay in filing/re-filing of the appeal.

The stand taken by learned counsel for the applicant/appellant that the appeal was initially filed in this Court, within time and after the office raised certain objections and the appeal returned to him for removing those objections, the brief got mis-placed and once the brief was found, the appeal was re-filed, is against the record. The appeal itself, the memo. of parties, the application for condonation of delay, besides two miscellaneous applications as well as the power of attorney bear the date as 27.8.2015. The filing stamp put on the memo. of parties clearly indicate that the appeal was being filed on 27.8.2015. Any such stamp of the office indicating the filing of the appeal initially within the period of limitation does not appear on the memo. of parties or on any other relevant document.

From the above, it is made out that the impugned order dated 17.11.2011 passed by the Additional Sessions Judge (FTC), Jalandhar is being challenged by the applicant/appellant by filing the appeal beyond the prescribed period of limitation by 1299 days. The reason given by the applicant/appellant explaining the delay in filing of the appeal is against the record. It is true that Courts have to take liberal and pragmatic approach while deciding the issue of limitation but when the applicant/appellant takes false plea in order to seek condonation of delay, the Court should come heavily upon him. Even otherwise, the appeal against the order of the trial Court acquitting respondents No.2 and 3 of the charges against them was filed by the State beyond the prescribed

period of limitation. So much so that alongwith the said appeal before the lower appellate Court no application had been filed for condonation of delay. During the pendency of the application moved by respondent No.2- Sohan Singh also, no steps were taken for filing application in order to seek condonation of delay in filing of the appeal.

In view of the above, there is no sufficient cause for condoning the delay in filing of the appeal.

The application is without any merit and, accordingly, dismissed.

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Since this Court has dismissed the application filed by the appellant under Section 5 of the Limitation Act for condonation of delay of 1299 days in filing the appeal, the appeal is, hereby, dismissed being barred by limitation.

**(T.P.S. MANN)
JUDGE**

**(RAMENDRA JAIN)
JUDGE**

May 02, 2016
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