

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

Criminal Appeal. No.S-802-SB of 2015(O&M)

Date of Decision:-03.02.2016

Dinesh Kumar

...Appellant

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. *Whether reporters of local newspapers may be allowed to see judgment?*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Ms. Minakshi Poswal, Advocate for
the applicant-appellant.

Mr. Manish Bansal, DAG, Haryana

HARI PAL VERMA J.(Oral)

Criminal Misc. No.5692 of 2015

Prayer made in the instant application filed under Section 5 of the Limitation Act is for condonation of delay of 228 days in filing the appeal.

Learned counsel appearing for the applicant submits that though the order was passed on 06.05.2014, however, it came to the notice of the applicant-appellant only after 06.10.2014, when the warrant was issued against him. On receipt of warrant, he activated his efforts to file the appeal and in this process the delay of 228 days has occurred.

On the other hand, learned counsel for the State submits that the grounds pleaded by learned counsel for the

applicant does not fall within the ambit of Section 5 of the Limitation Act, as the applicant failed to establish sufficient cause.

Heard.

Taking into consideration the fact that the impugned order came to the notice of the applicant-appellant only after 06.10.2014, when the warrant was issued against him, the grounds given by counsel for the applicant seeking condonation of delay is sufficient.

Accordingly, the present application is allowed and delay of 228 days in filing the instant appeal is condoned.

Criminal Appeal. No.S-802-SB of 2015

Through the instant appeal, the appellant has challenged the order dated 06.05.2014 passed by learned Addl. Sessions Judge, Kurukshetra, whereby penalty of Rs.25,000/- has been imposed upon the appellant, who stood surety for his son Pankaj @ Bhola, but failed to appear before the Court in response to notice under Section 446 Cr.P.C.

Notice was issued to the appellant and the same was received back duly served, but the appellant-Dinesh Kumar did not appear in the Court, persuading learned Addl. Sessions Judge, Kurukshetra, to pass an order of imposing penalty of Rs.25,000/- upon the appellant.

Learned counsel appearing for the appellant submits that the accused, namely, Pankaj alias Bhola, son of the appellant has already been convicted by the learned trial Court and non-appearance of the appellant-Dinesh Kumar was not intentional. She further submits that the appellant is very poor person and

not in a position to arrange the penalty amount. However, in the changed circumstances, son of the appellant-Pankaj alias Bhola has been convicted, counsel for the appellant prays that penalty imposed upon the appellant by learned trial Court may be reduced.

Learned counsel for the State submits that the impugned order has been passed as a last resort, as the learned trial Court had made its best efforts to procure the presence of the accused even by issuing warrants of arrest to him.

Heard.

Since, it is the admitted case of the parties that the main accused, Pankaj @ Bhola, has already been convicted under NDPS Act and the appellant is father of the main accused, he is very poor person and is unable to arrange the penalty amount, this Court finds that ends of justice would be met if the penalty amount is reduced.

Accordingly, the present appeal is disposed of with a modification in the impugned order dated 06.05.2014 passed by learned Addl. Sessions Judge, Kurukshetra, to the extent that amount of penalty of Rs.25,000/- to be recovered from the appellant, is reduced to Rs.2,500/-.

However, the appellant shall deposit the said amount within a period of one month from today and in case, he fails to deposit the said amount within the stipulated time, the instant appeal is liable to be dismissed.

03.02.2016
Anjal

(HARI PAL VERMA)
JUDGE