

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-34817 of 2013 (O&M)
Date of Decision: February 27, 2016

Jaswant Lal

...Petitioner

VERSUS

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

Mr.P.S.Grewal, Deputy Advocate General, Punjab
for the respondent-State.

Mr.Sunil Chadha, Senior Advocate with
Mr.Kirpal Singh, Advocate
for respondent No.2.

None for respondent No.3.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C.
for quashing of order dated 24.11.2009 passed by learned Sub
Divisional Judicial Magistrate, Jagraon and for quashing of order
dated 20.09.2013 passed by learned Addl. Sessions Judge, Ludhiana.

Notice of motion was issued and learned State counsel as
well as learned counsel for respondent No.2 appeared and contested
the petition. However, none appeared on behalf of respondent No.3
despite service.

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

As per the record, I find that in a complaint case filed by Jaswant Lal petitioner against Mohan Sarup Sehgal and Pawan Kumar under Sections 465, 467, 468, 471 34 IPC and Section 196 Cr.P.C., learned SDJM, Jagraon vide order dated 24.11.2009 discharged the accused on an application filed under Section 245(2) Cr.P.C. for discharge. Against this order, a revision petition was filed by the petitioner-complainant before the Sessions Court along with application for condonation of delay of 97 days in filing the revision petition under Section 5 of the Limitation Act. Learned Addl. Sessions Judge, Ludhiana vide order dated 20.09.2013 dismissed the application under Section 5 of the Limitation Act for condonation of delay and consequently, the revision petition was also dismissed.

From the record, I find that in the present case, learned SDJM, Jagraon has passed the impugned order on 24.11.2009. Application for supply of copy was made on 25.11.2009, which was prepared on 06.02.2010 and delivered on 11.02.2010. Learned Addl. Sessions Judge, Ludhiana held that the revision could be filed upto 05.05.2010 but it has been filed after delay of 97 delays. It is stated in the application that applicant is a businessman and has to go to Ludhiana from Jagraon every day. He had been meeting the clerk of his counsel for a number of days and every time he was told that copy of order was not ready and ultimately in the month of January, 2010 the applicant gave his mobile number to the clerk of his counsel and

told him to convey the message as soon as he gets certified copy of order. Thereafter, the applicant approached clerk of court but he was not available. The applicant thought that he had supplied his mobile number to the clerk of his counsel and that he would receive the message regarding receipt of order as and when clerk received same from the court. It is also stated that during the month of May and June, the applicant was not having good health and could not go to the courts to meet the clerk of counsel to inquire about availability of order and it was only on 03.08.2010 he went to the courts at Jagraon and met clerk of Sh.V.K.Bansal, Advocate, who told him that certified copy was obtained in the month of February, but he could not convey message as mobile number of applicant was lost. There is no intentional fault on the part of revisionist/complainant as clerk of his counsel did not inform him about receipt of copy of order and delay has occurred also due to his illness for long time and delay of 97 days in filing of revision was beyond control of revisionist/complainant.

The respondents filed reply to the application for condonation of delay and denied the facts given in the application. It is stated that applicant is facing many cases under Gambling Act at Jagraon and he is a regular visitor the Courts at Jagraon and meets his counsel. It is also stated that revision is hopelessly time barred.

The applicant (present petitioner) examined Ramandeep Singh, Clerk of Sh.V.K.Bansal, Advocate as AW-1 and himself as AW-2. Learned Addl. Sessions Judge, Ludhiana, after discussing the evidence, dismissed the application.

After going through the record, I find that 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 to the technicalities of law. There should be satisfactory explanation or some ground for condoning the delay. The proof for condoning the delay cannot be strict one as in criminal case that it should be proved beyond reasonable doubt. The perusal of the record nowhere shows that there was any mala fide intention on the part of the complainant-petitioner in filing the revision petition with delay. There is also nothing on the record to show that complainant-petitioner is to be benefitted in any way with such a delay. The petitioner has brought the Clerk of the Advocate and himself to the witness box to explain the delay. The Court is to adopt liberal approach while condoning the delay. The petitioner has stated that he was ill in the month of May and June and he himself has appeared in the witness box. There is nothing to disbelieve his statement.

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 20.09.2013 passed by learned Addl. Sessions Judge, Ludhiana is not as per law and the same is set aside. The application for condonation of delay of 97 days filed before Sessions Court as well as present petition are allowed. The matter is remanded back to the Court below to decide the revision petition on merits as per law.

The parties are directed to appear before learned Addl. Sessions Judge, Ludhiana on 28.03.2016.

February 27, 2016
Vgulati

(INDERJIT SINGH)
JUDGE