

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

Criminal Revision No.2115 of 2015(O&M)

Date of Decision: 06.12.2016

Shanker Dev

....Petitioner(s)

Versus

UT of Chandigarh

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. R.S.Rana, Advocate for the petitioner(s).

Mr. Rajiv Sharma, APP U.T. Chandigarh.

HARI PAL VERMA, J. (ORAL)

CRM-18954 of 2015

This is an application under Section 5 of Limitation Act, seeking condonation of delay of 3006 days in filing the present revision petition.

Learned counsel for the applicant-petitioner has argued that vide judgment dated 12.02.2005 passed by learned Judicial Magistrate 1st Class, Chandigarh, the applicant-petitioner was convicted for offence under sections 420, 467, 468 and 471 IPC. He further submits that after conviction by the learned Magistrate, the petitioner preferred an appeal and was granted bail. After that in order to earn his livelihood, the petitioner has gone to Assam, during which, his appeal was dismissed on 12.12.2006 by the learned Addl. Sessions Judge, Chandigarh. He also submits that since the petitioner remained in Assam, in order to earn his livelihood, on coming to know the fact that his appeal has been dismissed, he returned

back to Chandigarh and surrendered before the trial Court on 05.11.2014 and since then he is in custody. Therefore, delay in filing the present revision petition has been occurred.

Learned APP UT, Chandigarh has not filed any reply to the present application and in this manner, facts averred in the application have not been controverted. However, he submits that since there being an inordinate delay of 3006 days, present revision petition deserves to be dismissed.

Heard.

Admittedly, it is not the case of the prosecution that after dismissal of appeal, the petitioner was arrested, rather he himself surrendered before the trial Court. In these circumstances, this Court finds that the act of the petitioner to surrender before the trial court to face trial in accordance with law, leads to a conclusion that he has accepted the majesty of law. However, it being an inordinate delay of 3006 days, but considering the aforesaid facts as well as the fact that as against the awarded sentence of 03 years, the applicant-petitioner is custody for a period of about 02 years and 06 months including remissions, delay of 3006 days in filing the present revision petition, is condoned.

CRM stands disposed of.

Criminal Revision No.2115 of 2015

Petitioner, namely, Shanker Dev, has filed the present revision petition challenging judgment dated 12.12.2006 passed by learned Additional Sessions Judge, Chandigarh, vide which the criminal appeal preferred by the petitioner against the judgment of conviction and order of

sentence dated 12.02.2005 passed by learned Judicial Magistrate Ist Class, Chandigarh, was dismissed with modification in the order of sentence.

The learned trial Court vide judgment dated 12.02.2005 held the petitioner guilty of offence punishable under Section 420, 467, 468 and 471 IPC and vide separate order of even date sentenced him as under:-

<i>U/s 420 IPC</i>	<i>To undergo RI for three years and to pay a fine of Rs.1000/- and in case of default of payment of fine, the accused-petitioner shall undergo RI for one month.</i>
<i>U/s 467 IPC</i>	<i>To undergo RI for three years and to pay a fine of Rs.1000/- and in case of default of payment of fine, the accused-petitioner shall undergo RI for one month.</i>
<i>U/s 468 IPC</i>	<i>To undergo RI for three years and to pay a fine of Rs.1000/- and in case of default of payment of fine, the accused-petitioner shall undergo RI for one month.</i>
<i>U/s 471 IPC</i>	<i>To undergo RI for three years and to pay a fine of Rs.1000/- and in case of default of payment of fine, the accused-petitioner shall undergo RI for one month.</i>

All the sentences, however, were ordered to be run concurrently.

Briefly stated, the petitioner-Shanker Dev had applied for enlistment as a constable in Band Staff of Chandigarh Police by introducing himself as an Ex-serviceman. He was not selected in view of the two years of interruption from the date of his discharge from Indian Army. His application remained under Selection trial at Chandigarh Police and when his application was dealt with on turn, he was asked to submit documentary proof in support of his claim. The documents produced by him were got verified upon which it transpired that he had tampered with his discharge certificate issued by the Indian Army and changed the date to 31.08.1992 instead of 31.08.1990, so as to become eligible for

enlistment as Constable. Due to tampering with the discharge certificate, he was not recruited. Upon the orders passed by Inspector General of Police, Chandigarh, FIR No.81 dated 31.07.1995 under Sections 420/467/468/471 IPC was registered with Police Station North, UT Chandigarh. After completion of investigations challan against the petitioner was filed in the court of learned Illaqa Magistrate, Chandigarh.

Finding prima facie case under sections 420, 467, 468 and 471 IPC, charges were framed against the accused/petitioner, to which he pleaded not guilty and claimed trial.

To substantiate the case against the petitioner, the prosecution examined as many as 10 witnesses.

The statement of the petitioner under Section 313 Cr.P.C. was recorded, wherein all the incriminating evidence available on record was put to him. He refuted the incriminating circumstances and pleaded false implication.

On the basis of the evidence on record, learned trial court held the petitioner guilty of the charges under Sections 420, 467, 468 and 471 IPC and sentenced him, as indicated above.

Feeling aggrieved, the petitioner preferred an appeal before the learned Additional Sessions Judge, Chandigarh, but the same was dismissed with modification in order of sentence. The conviction of the accused-petitioner under Section 420 IPC was altered to Section 420 read with Section 511 IPC and sentenced to undergo RI for one year and to pay a fine of Rs.1000/- and in default to further undergo RI for one month. His conviction under Section 468 and 471 IPC was however maintained and

conviction under Section 467 IPC was set aside.

It is in these circumstances the petitioner has filed the present revision petition challenging the verdicts of the Courts below.

At the outset, learned counsel for the petitioner has confined his arguments qua quantum of sentence only. He contends that, as against the awarded sentence of three years, the petitioner has undergone custody of more than 02 years and 06 months including remissions. He is first time offender and has prayed sentence of the petitioner may be reduced to the period already undergone by him.

Learned State counsel has produced custody certificate of the petitioner, which is taken on record. Though, he does not dispute the aforesaid facts including the custody of the petitioner, but opposed the plea of taking liberal view, as raised by counsel for the petitioner.

I have heard learned counsel for the parties.

Since the present revision petition has not been contested by the petitioner on merits, the impugned judgments dated 12.02.2005 and 12.12.2006 passed by the trial Court and the appellate Court respectively, are upheld. However, taking into consideration the fact that as against the awarded sentence of 03 years, he has suffered incarceration for a period of more than 02 years and 06 months, this Court feels that the ends of justice would be met in case the sentence awarded to him is reduced to the period already undergone by him. However, the fine imposed by the trial Court shall remain intact.

Ordered accordingly.

Perusal of the order of sentence dated 12.02.2005 passed by

the trial Court shows that the accused-petitioner has already paid the fine.
Therefore, he be released from custody forthwith, if not required in any
other case.

With the aforesaid modification in the quantum of sentence,
the present revision petition stands dismissed.

(HARI PAL VERMA)
JUDGE

06.12.2016
'ANJAL '

Whether speaking/reasoned?
Whether reportable?

Yes
Yes/No