

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

CRM-A-1226-MA-2014 (O&M)

Date of Decision: November 30, 2017

Mohini Bharat @ Seema

...Petitioner

Versus

V.K. Bharat and others

...Respondents

**CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR**

Present:- Mr. Rajinder Goyal, Advocate  
for the applicant.

Mr. Anand Rohilla, Advocate  
for the respondents.

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**JAISHREE THAKUR, J. (Oral)**

**CRM-23345-2014**

This application has been preferred for condoning the delay of 1716 days in filing the application for grant of special leave to appeal.

It is the contention of the applicant that the criminal complaint was decided by the trial court on 11.09.2009 and thereafter, the applicant filed the application for grant of special leave to appeal bearing CrI. Misc. No.A-616-MA-2010 before this Court, which was decided on 26.08.2010 with liberty to the applicant to file appeal before the Courts of Sessions. It is thereafter, the applicant approached the Sessions Court on 04.10.2010, however, in view of the decision rendered by Full Bench of this Court in

***Tata Steel Ltd. vs. M/s Atma Tube Products Ltd. ILR(2013) 1 Pb. & Hy.***

**719**, the learned Addl. Sessions Judge, Ludhiana held that the appeal to be not maintainable, being appeal against acquittal. It is submitted that after obtaining the certified copy of the said order, the applicant again approached this court, which has resulted in delay of 1716 days in filing the application for grant of special leave to file the appeal.

On the other hand, learned counsel for the respondents opposes the instant application, while submitting that the applicant has failed to explain such a huge delay, therefore, the application is liable to be dismissed.

Heard learned counsel for both the sides.

Section 5 of the Limitation Act deals with extension of prescribed period in certain cases, for which the applicant has to satisfy the court that he had sufficient cause for not preferring the appeal or making the application within such period. Corresponding Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in court without jurisdiction, where a party prosecuted the case in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it. The context provided under Section 5 of the Limitation Act seems to suggest that "within such period" means within the period which ends with the last day of limitation prescribed. In other words, in all cases falling under Section 5 what the party has to show is as to why he did not file an appeal on the last day of limitation prescribed. That may inevitably mean that the party will have to show sufficient cause not only for not filing the appeal on the last day but to explain the delay made thereafter day by day. In other words, in showing sufficient cause for condoning the delay the

party may be called upon to explain for the whole of the delay covered by the period between the last day prescribed for filing the appeal and the day on which the appeal is filed.

In the case in hand, after dismissal of his criminal complaint before the trial court, the applicant approached this Court, but he was directed to knock on the doors of the Sessions Court. However, when the applicant approached the Sessions Court, his appeal has been held to be not maintainable in view of the decision rendered by Full Bench of this Court in ***Tata Steel Ltd. vs. M/s Atma Tube Products Ltd.(supra)***. This court is of the considered view that the applicant has been prosecuting his case with due diligence in good faith in courts, which were unable to entertain the same, due to the law prevalent at that time and this is sufficient cause for not preferring the application for grant of special leave to appeal with the prescribed period. In order words, all the above episodes are sufficient to satisfy this court for not filing the application in time.

In view of the above, the application in hand is allowed and delay of 1716 days in filing the application for grant of special leave is condoned.

**CRM-A-1226-MA-2014**

This is an application that has been filed under Section 378(4) Cr.P.C. for grant of special leave to file appeal against the judgment dated 11.09.2009 passed by the learned JMIC, Ludhiana.

In brief, the facts of the case are that applicant-Mohini Bharat filed a complaint under Sections 406, 498-A of Indian Penal Code before the court of Judicial Magistrate Ist Class, Ludhiana against her husband,

father-in-law, mother-in-law and brother-in-law, alleging therein that her marriage was solemnized with accused No.1-V.K. Bharat on 20.04.1996 as per Hindu rites and ceremonies. It was submitted by the complainant that certain gold items and gifts were given to the accused persons at the time of ring ceremony and after solemnization of her marriage with accused No.1, various dowry articles were entrusted to each of the accused, but all the accused persons failed to return the same. It was mentioned by complainant that the accused persons have misappropriated her Istridhan and entire dowry articles, which were in their possession. Thereafter, the accused persons started harassing the complainant for bringing less dowry and also gave beatings to the complainant. In the meanwhile, complainant gave birth to a female child on 19.08.1997 at Chandigarh, but the behaviour of the accused persons did not change, which resulted in filing of the instant complaint.

On the basis of pre-summoning evidence, accused No.1 to 3 were summoned and on appearance of accused, they were released on bail and charge-sheeted under Sections 406, 498-A of Indian Penal Code, to which accused persons pleaded not guilty and claimed trial.

Thereafter, the complainant produced two witnesses in all, in support of her case. Sh. Harbhajan Singh was examined as CW1 and complainant herself examined as CW2. After the evidence of the complainant was over, statements of accused persons were recorded under Section 313 Cr.P.C. and they sought opportunity to lead evidence in defense, but they did not do so.

After hearing both the sides, the accused persons were

acquitted by the trial court by its judgment dated 11.09.2009.

Learned counsel for the applicant contends that the trial court has erred in law, in not considering the fact that guilt of the respondents is fully proved on record. It is submitted that the respondents misappropriated the dowry articles of the applicant and also maltreated her for bringing less dowry, but the trial court has failed to appreciate the facts of the case in their correct perspective. It is argued that the findings recorded by the trial court are based on misreading of evidence and are liable to be set aside. It is also contended that acquittal of the respondents by the trial court was solely on the ground that the applicant was not cross-examined after framing of the charges, which is not sustainable in the eyes of law.

Per contra, learned counsel appearing on behalf of respondents argues that the judgment passed by the trial court is well reasoned and there is no ground made out to interfere with the same.

I have heard learned counsel for both the sides, apart from perusing the record.

The trial court by its judgment dated 11.09.2009, acquitted the accused persons i.e. the respondents herein while observing as under;-

“9. After hearing both the learned counsel, I am of the considered view that submissions of learned counsel for complainant that no cross-examination of complainant was conducted by accused persons does not carry any weight as after framing of charge complainant failed to enter into witness box for facing cross-examination as is clear from the zimni order concerned w.e.f. 18.08.2004 to 01.05.2006, the day on which the after charge evidence of the complainant was closed by order. Mere presence of

complainant on 01.05.2006 was not sufficient. However, she was to enter into the witness box for the purpose of her cross-examination and in case that would have been the situation then the court would have mentioned this fact that opportunity of cross-examination of complainant was afforded and the same was not availed by accused persons and the court would have mentioned that the cross-examination of complainant was NIL, but the perusal of the zimni order dated 01.05.2006 makes it crystal clear that no CW was present on that day and that day was the last chance for the complainant to conclude her evidence, but complainant failed to do so and did not produce any witness, so after charge evidence of the complainant was closed by order. The order dated 01.05.2006 being having been attained finality, complainant is bound by the same. Further, I am of the view that merely because no suggestion was given to complainant during her pre-charge evidence regarding non entrustment of dowry articles is not fatal as in the pre-charge evidence scope of cross-examination is limited to the extent of falsifying the prima facie case. Thus, there being no after charge evidence on file from the side of complainant, further keeping in view the findings of the civil court to the effect that husband of complainant i.e. accused no.1 neither subjected the complainant to cruelty not deserted her, complainant has failed to prove her case beyond shadow of any doubt, entitling accused to be given benefit of doubt. Thus, I hereby acquit all the accused.....”

From the observations given by the learned trial court, it is made out that in her after charge evidence, the applicant/complainant failed

to produce any evidence against the accused persons. Further, after charge evidence of the complainant was closed by the trial court by its order dated 01.05.2006, which order was not challenged and thus has attained finality. Learned counsel for the applicant/complainant has miserably failed to point out any illegality or infirmity in the impugned judgment so passed. The judgment passed by the trial court is well reasoned, because the applicant/complainant did not produce any evidence, after framing the charges against the accused/respondents. Hence, when there is no evidence led by the accused/complainant against the accused/respondents after framing of charges, the trial court was right in holding that the applicant/complainant has failed to prove her case.

In view of the above discussion, the application in hand is hereby dismissed, being devoid of any merits.

**November 30, 2017**

*vijay saini*

**(JAISHREE THAKUR)  
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No