

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

CRR No.1406 of 2017 (O&M).
Decided on:- July 28, 2017.

Gurmeet Singh.

.....Petitioner.

Versus

State of Punjab through Dilbagh Singh.

.....Respondent.

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

Present:- Mr. Ashuthosh Hoshiarpuri, Advocate
for the petitioner.

HARI PAL VERMA, J.

Petitioner Gurmeet Singh has filed the present revision petition against the order dated 06.03.2017 passed by learned Additional Sessions Judge, Ferozepur, whereby the application filed by respondent-complainant Dilbagh Singh under Section 5 of the Limitation Act, 1963, was allowed subject to payment of cost of Rs.5,000/- and delay in filing the appeal against the judgment of acquittal dated 23.09.2014 passed by learned Judicial Magistrate 1st Class, Zira, was condoned.

Briefly stated, an FIR No.13 dated 03.02.2010 under Sections 420, 465, 467, 468, 471 and 120-B IPC was registered at Police Station Makhu against petitioner Gurmeet Singh along with two other accused, namely, Jagir Singh and Sukhbir Singh. The said FIR was registered on the basis of an application moved by respondent-complainant Dilbagh Singh on the allegation that the petitioner and other co-accused have forged an agreement of sale. In the application, complainant Dilbagh Singh has stated

that one Amarjit Kaur was married with Gurbax Singh at village Rasulpur and Jaspal Kaur was her only child. Amarjit Kaur and Jaspal Kaur inherited about 6 acres of land. As she was living in her parental home, she sold approximately 3 acres of land to petitioner-accused Gurmeet Singh and remaining land was given on lease to Gurmeet Singh. However, for about 2-3 years, Gurmeet Singh was not paying any lease amount and one Joginder Singh came with an offer to sell the land of Amarjit Kaur. Amarjit Kaur agreed to sell the remaining land to complainant Dilbagh Singh through agreement of sale dated 11.11.2006 and accordingly, sale deed was executed on 23.01.2009. After showing the land, Amarjit Kaur had gone back to her home. However, when complainant Dilbagh Singh went to take possession of the suit land, petitioner-accused Gurmeet Singh told the complainant that the agreement of sale dated 21.11.2008 has already been executed by Amarjit Kaur in his favour. Gurmeet Singh handed over a photocopy of the said agreement. However, when the matter was taken up to Amarjit Kaur, she saw the signatures of Amarjit Kaur in Punjabi on the photocopy. Noticing this fact, Amarjit Kaur told that she is an illiterate lady and she cannot sign. She alleged that petitioner Gurmeet Singh has forged an agreement to sell with an intention to cause wrongful loss to the complainant.

On the basis of aforesaid FIR, police conducted investigation and report as required under Section 173 Cr.PC was presented in the Court. Copy of Challan, as envisaged under Section 207 Cr.PC was supplied to the accused.

On finding a prima-facie case, charge under Sections 120-B, 420, 465, 467, 468 and 471 IPC was framed against the accused.

The witnesses of the prosecution i.e. PW4 Joginder Singh and PW5 Mohinder Singh turned hostile in the case and they admitted that Amarjit Kaur mother of Jaspal Kaur had executed an agreement of sale in favour of accused Gurmeet Singh. They did not depose that the agreement of sale was forged and fabricated by the accused.

The trial Court found that the prosecution has failed to prove the guilt of the accused persons beyond all reasonable doubts and shadow and, therefore, petitioner-accused Gurmeet Singh and two other co-accused, namely, Jagir Singh and Sukhbir Singh were acquitted of the charge levelled against them by the trial Court vide judgment dated 23.09.2014.

Aggrieved against the aforesaid judgment of acquittal dated 23.09.2014, respondent-complainant Dilbagh Singh filed an appeal before the Court of Session. Along with the appeal, an application under Section 5 of the Limitation Act, 1963 was also filed seeking condonation of delay in filing the appeal.

While seeking condonation of delay, the respondent-complainant has pleaded that he came to know about the acquittal of the accused in the case when the accused party proclaimed their acquittal in the village and when he filed an execution application against the complainant. The complainant made enquiry and came to know that the accused have been acquitted and Amarjit Kaur was never summoned at her correct address. Thereafter, the complainant approached the prosecution agency, but the prosecution did not bother to file an appeal against the judgment of acquittal. On 24.03.2015, the complainant applied for the certified copy of the judgment dated 23.09.2014, which was supplied to him on 25.03.2015. Thus, there was

delay in filing the appeal.

Reply to the aforesaid application was filed by petitioner-accused Gurmeet Singh taking preliminary objections that the application is not maintainable and no sufficient cause is mentioned in the application. No such document has been placed on record to show that there was sufficient cause in not filing the appeal within limitation. The judgment of acquittal was passed by the trial Court on 23.09.2014, whereas the appeal was filed in April, 2015 i.e. after more than six months.

After hearing both the parties, learned Additional Sessions Judge, Ferozepur allowed the said application subject to payment of cost of Rs.5,000/- vide order dated 06.03.2017. The reason for condonation of delay has been mentioned in para No.10 of the order dated 06.03.2017.

Feeling aggrieved against the said order dated 06.03.2017, petitioner Gurmeet Singh has preferred the present revision petition.

Learned counsel for the petitioner has argued that against the judgment dated 23.09.2014 passed by learned Judicial Magistrate 1st Class, Zira, the State has not preferred an appeal and it is only the respondent-complainant, who has filed the appeal before the Court of Session.

He has further argued that the averments made in the application for condonation of delay in filing the appeal are vague and the same are not supported by an affidavit of the complainant. The petitioner has contested the application seeking condonation of delay and has specifically pleaded that sufficient cause has not been mentioned in the application for condonation of delay in filing the appeal. There is a delay of more than six months in filing the appeal as the judgment of acquittal was passed on 23.09.2014, whereas

the appeal was preferred in April, 2015. Since no cogent reason was given by learned Additional Sessions Judge, Ferozepur for condonation of delay, the order dated 06.03.2017 is liable to be set aside.

I have heard learned counsel for the petitioner.

Vide judgment dated 23.09.2014 passed by the trial Court, petitioner-accused Gurmeet Singh and two other co-accused, namely, Jagir Singh and Sukhbir Singh were acquitted of the charge levelled against them. Against the aforesaid judgment of acquittal, respondent-complainant Dilbagh Singh has filed an appeal before the Court of Session on 01.04.2015.

The FIR in question was registered on the complaint made by complainant Dilbagh Singh. He being a victim and has seriously contested his complaint, was expecting that the prosecution would prefer an appeal against the judgment of acquittal dated 23.09.2014 passed by the trial Court. Since the prosecution has not filed an appeal against the said judgment, the complainant applied for the certified copy of the judgment on 24.03.2015, which was supplied to him on 25.03.2015. Immediately thereafter, he preferred an appeal on 01.04.2015. The complainant has pleaded that the factum of judgment dated 23.09.2014, whereby the accused were acquitted by the trial Court, came to his notice only when the accused party proclaimed their acquittal in the village and they also filed an execution application against him, on which summons were received by him. It is immediately thereafter, he made enquiry and came to know that the accused have been acquitted in the case, whereas Amarjit Kaur was never summoned at her correct address. Therefore, he has filed an appeal at the earliest possible time.

The plea of the petitioner that sufficient cause has not been shown, therefore,

cannot be accepted.

Hon'ble Supreme Court in *Chandan Singh Versus National Insurance Company Limited and another 2015(1) RCR (Civil) 920* has held that the Courts and Tribunals are required to examine the cases of the litigants on merits and not to reject the cases at the threshold on technicalities i.e. on the ground of delay.

In the present case, the complainant being a victim, and when the prosecution has failed to challenge the acquittal, has a right to file an appeal. Merely because the appeal has been preferred after the expiry of period of limitation, the complainant cannot be deprived of his legal right to challenge the judgment of acquittal and the law on the point of condonation of delay has to be applied leniently.

Thus, there is no illegality or irregularity in the impugned order dated 06.03.2017 passed by learned Additional Sessions Judge, Ferozepur which may warrant interference by invoking the revisional jurisdiction of this Court. Accordingly, affirming the impugned order, the instant revision petition, being devoid of any merit, is dismissed.

July 28, 2017

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No