

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

**CRM-A-402-MA-2014(O&M)
Date of decision :-10.9.2018**

Smt.Pavitra

..... Applicant

Versus

Anoop Singh and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Mr.Navneet Singh, Advocate
for the applicant.

Mr.M.S. Yadav, Advocate
for the respondents.

H.S. MADAAN, J.

Complainant Smt.Pavitra wife of Naresh Kumar, resident of Saidpur, Tehsil Farukh Nagar, District Gurugram had filed a complaint under Sections 323, 354, 506, 34 IPC against accused Anoop Singh and Balraj on the allegations that on 29.11.2005 at about 2:00, while she along with her two daughters, namely, Jyoti and Manjeet was working in the fields, then both the accused came there while being under influence of liquor and inquired from daughters of complainant regarding their father; that the complainant replied that her husband was out of station and would return late in the evening; that both the accused started abusing the

complainant and her daughters and when asked to desist from doing so by the complainant, then accused Anoop Singh caught hold of hand of the complainant, whereas accused Balraj manhandled her; that Anoop Singh put his hand inside the shirt of the complainant and caught her breast, whereas both the accused started touching whole body of the complainant. However, on an alarm being raised by the complainant and her daughters, the accused ran away from the spot in their car and while leaving they held out a threat to the complainant that she should tell her husband to withdraw the case otherwise she and her husband would be killed; that in the evening on that very day when husband of the complainant returned home, then the complainant narrated the entire incident to him, thereafter, they submitted a written complainant at Police Station Farukh Nagar. According to the complainant on 1.12.2005, SHO Police Station Farukh Nagar called the complainant and her husband to the police station, where the two accused were already present; the signatures of the complainant and her husband were taken on blank white papers under pressure, which were then turned into a compromise. According to the complainant, a civil case is pending between the complainant party and accused Anoop Singh, which the accused wanted the complainant party to withdraw. It is further the case of the complainant that on 18.2.2006, they got summons at their house from the Court of Magistrate, Gurugram under Sections 107/150 Cr.P.C., that case had been instituted by Anoop Singh where the complainant and her husband had to obtain bail; that on 26.2.2006, accused came to the house of complainant at about 7:00 a.m. proposing that if the complainant side withdraw its cases, then the accused would also withdraw the cases filed by

them. Ultimately a private complaint was filed in the Court of JMIC, Gurugram, which was dismissed for non-prosecution vide order dated 16.7.2011; that the complainant had filed a criminal revision petition against that order passed by JMIC, Gurugram, which was dismissed being not maintainable for the reason that in case of dismissal of a private complaint, the complainant has statutory right of appeal as provided under Section 378(4) Cr.P.C.

Feeling aggrieved, the complainant has approached this Court moving an application under Section 378(4) of Code of Criminal Procedure seeking grant of Special Leave to appeal.

On notice, the respondents put in appearance through counsel.

The complainant has approached this Court belatedly and there is delay of 848 days in filing of application for special leave to appeal.

I have heard learned counsel for the parties besides going through the record.

Section 3 of the Limitation Act, 1963 deals with Bar of Limitation providing that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

Section 5 of that very act provides that any appeal or any application may be admitted after the prescribed period if the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

A separate application under Section 5 of the Limitation Act has been filed in which it is contended that the criminal complaint had been

dismissed for non-prosecution due to wrong noting down of date; that an application for restoration of complaint was filed, which was dismissed on 1.3.2012, therefore, the complainant had filed a criminal miscellaneous petition for quashing of order dated 16.7.2011 and for restoration of the complaint in this Court and this Court vide order dated 20.2.2013 dismissed the petition granting liberty to petitioner to avail appropriate remedy under the law. Then a revision petition was filed on 12.3.2013 in the Court of Sessions Judge, Gurugram, which was dismissed vide order dated 16.9.2013 on the point of maintainability in view of Full Bench Judgment of this Court in **M/s Tata Steels case, 2013(2) RCR(Criminal)1005 (P&H)**. Thereafter, the present application as filed resulting in the delay.

Aggrieved by the order dismissing her complaint, the complainant had adopted every possible measure i.e. of moving the trial Magistrate seeking recalling of order, knocking at the door of this Court seeking quashing of order dated 16.7.2011, dismissing the private complaint filed by the complainant for non-prosecution. However, this Court refused to quash the order thereby dismissing the petition, though granting liberty to the petitioner to avail appropriate remedy.

It is said that ignorance of law is no excuse. The complainant should have filed an application for special leave to appeal and instead of doing so, she indulged in filing revision petition as well as a petition under Section 482 Cr.P.C., which were rejected. Keeping in view the facts and circumstances of the case, the gross delay in approaching the Court, which has not been explained satisfactorily, in my view, the application under Section 5 of the Limitation Act is bound to fail and is dismissed. The appeal

being time barred is also doomed for failure.

Thus there is no ground to grant special leave to appeal in this case. The application is, therefore dismissed accordingly.

10.9.2018
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(H.S. MADAN)
JUDGE

1. Whether reportable? **No /Yes**
2. Whether speaking / reasoned? **No / Yes**