

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Misc. No. 10966 of 2015 in/and
CRM-A-594-MA of 2015
Date of Decision: 24.9.2018**

Jatinder Kaur

.....applicant

Versus

Tarsem Kaur and another

....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. M.L.Saini, Advocate
for the applicant.

Mr. R.D.Rattewal, Advocate
for the respondents.

ANITA CHAUDHRY, J

It would be necessary to first give few facts before adverting to the merits of the application seeking condonation of delay.

Jatinder Kaur filed a complaint in 2007 against her husband and in-laws, jethani and other relatives. The complaint against some of them was dismissed while the remaining were summoned.

The complainant was married to Sukhwinder Singh in August 1995. The allegations were that the dowry articles and clothes were entrusted to each family member. The husband went abroad after three years of marriage and he used to send maintenance to her. The husband returned after 3½ years and the allegations were that the in-laws started poisoning his mind and the husband demanded a motor-cycle in connivance with rest of the accused. The husband left for Dubai three months later.

The allegations were that accused No. 4 and 7 interfered in her married life and demanded a motor cycle. A panchayat was convened by her parents but

they refused her rehabilitation. During the pendency of the complaint two of the accused died. The complaint as against two of them was dismissed. The husband was abroad and he was declared proclaimed offender. The trial ended in acquittal and the trial Court noted that the complaint had been filed after 11 years of marriage besides noticing other aspects.

The complaint was dismissed on 7.6.2013. The appeal had been filed in the year 2015 with a delay of 588 days. The reasons given for condonation of delay were explained as under:-

“3 That the trial court decided the trial on 07.06.2013 and it was informed by the counsel on 07.06.2013 that the trial of the case would be restarted again on the appearance of Sukhwinder singh her husband. It was never conveyed by the counsel that the trial has been finalized with regard to the other accused person who were acquitted on that very day while giving them benefit of doubt. This fact is only came to the knowledge of the applicant on 29.01.2015 when she visited the court with regard to the case of execution of maintenance on 29.01.2015 from the conversation of the accused persons with their counsel. On that very day the applicant got applied for the certified copy of the order dated 07.06.2013 and the same was delivered to her on 09.02.2015 and thereafter the present appeal is being filed without any further delay.

4. That the applicant has no source of income and now with a very difficulty, her father collected the money and got engaged counsel for her for filing the present appeal. So the delay in filing the appeal is neither intentional nor inadvertent but the same has been caused due to the reasons mentioned above which were totally beyond the control of the applicant”

I have heard both the sides at great length.

At the outset, it needs to mention that the delay in filing the appeal is considerable and it cannot be disputed that the onus to show that

there exists a sufficient cause lies upon the applicant. It is obligatory upon her to show that she was prevented from continuing to prosecute the proceedings before the higher Court. There is admittedly a delay of 588 days. To explain the delay, the applicant has filed a two page application and the reasons given therein are reflected in para 3 and 4 reproduced above. According to it, the applicant claims that she was informed by her counsel of the decision on 7.6.2013 itself and further the counsel conveyed to her that when the husband appears then the trial would be restarted. It is necessary to mention here that a complaint had been filed by the applicant under Section 406, 498-A, 506 IPC. The husband of the applicant was admittedly in Dubai as this fact is recorded in the memo of appearance on the title sheet available at page 19 of the record. He however, was declared proclaimed offender. The complaint as against accused No. 6 and 7 were dismissed. The father-in-law and *jethani* meanwhile had died and the Court recorded acquittal of the rest of them. The husband of the complainant was declared proclaimed offender. The applicant further pleads that when she went to the Court in January 2015 in regard to her maintenance case, she overheard the conversation of the accused with their counsel and then she applied for the certified copy of the order and it was delivered to her on 9.2.2015 and the appeal was filed without further delay.

It is necessary to emphasise that even after sufficient cause has been shown, a party is not entitled to condonation of delay in question as a matter of right. The proof of sufficient cause is a condition precedent for the exercise of discretionary jurisdiction vested in a Court by virtue of Section 5 of the Limitation Act. If sufficient cause is not proved nothing further needs to be done and the application has to be dismissed on that

ground alone. The delay should be clearly understood in contradistinction to inordinate unexplained delay. In addition to it, the Court has to take into account the conduct of the parties and the *bona fide* reasons for condonation of delay and whether the delay could have been avoided. This is the requirement of law which has been consistently followed.

On an analysis of the aforesaid principles, we revert to the merit of the application in hand. We notice that except for a vague averment that the counsel had advised them that the case would be re-opened that the appeal was not filed. The applicant then states that she overheard a conversation when the accused were talking to their counsel and then she applied for a certified copy of the order which was given to her on 9.2.2015. The applicant failed to give any cogent reasons for the unexplained and inordinate delay. The reasons are not *bona fide* and have been made up. Having arrived at this, it has to be held that there are no justifiable reasons for condoning the delay. The applicant knew about the decision that the accused who had faced trial had been acquitted on 7.6.2013. The appeal filed on 25.3.2015 was belated. The applicant had miserably failed to show any sufficient cause for condoning the delay and I have no hesitation in dismissing the application.

The application is dismissed and as a consequence thereof, the appeal does not survive and is dismissed.

(ANITA CHAUDHRY)
JUDGE

September 24, 2018
Gurpreet

Whether speaking/reasoned : **Yes**
Whether reportable : **Yes**