

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

CRM-M-27932-2018 (O&M)

Date of Decision:-9.7.2018

Jagdev Singh

... Petitioner

Versus

Sukhdev Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Munish Gupta, Advocate for the petitioner.

GURVINDER SINGH GILL, J.(Oral)

By way of filing this petition, the order dated 18.4.2018 passed by learned Additional District Judge, Ludhiana, whereby an application for condonation of delay has been accepted, is being assailed.

A few facts necessary to notice for disposal of this petition are that FIR had been registered against the petitioner for having committed an offence punishable under Section 304-A of Indian Penal Code, 1860. After conclusion of investigation, a report under Section 173 Cr.P.C. was filed in the Court of learned Judicial Magistrate 1st Class, Khanna. However, at the time of considering framing of charges, the petitioner was discharged vide order dated 1.8.2015. Aggrieved with the aforesaid discharge, the complainant preferred a revision petition, which was filed in the Court of Sessions on 6.11.2015. However, the said revision petition was dismissed by

learned Additional Sessions Judge, Ludhiana on 12.4.2016, holding therein that the discharge in a case under Section 304-A IPC amounted to acquittal and that a revision against such order was not maintainable and that an appeal ought to have been filed.

Thereafter, the complainant preferred an appeal against order dated 1.8.2015 in the Court of Sessions alongwith an application under Section 14 of Limitation Act for condonation of delay. The said application was accepted by the learned Appellate Court vide order dated 18.4.2018 and delay in filing of the appeal was condoned. It is this order, which has been challenged by accused Jagdev Singh by way of filing the present petition.

I have heard the learned counsel for the petitioner and have also perused the impugned order as well as the documents annexed with the petition.

The learned counsel for the petitioner has submitted that infact even the revision petition had been filed belatedly and that even if the time spent by the complainant while pursuing his petition is not taken into account, still the appeal is barred by limitation on account of gross delay of about 45 days. The learned counsel has further submitted that no explanation whatsoever to explain the said delay of about 45 day is forthcoming. It has also been submitted that the application under Section 14 of Limitation Act was misconceived and that infact an application in terms of Section 5 of Limitation Act should have been filed.

I have considered the aforesaid submissions.

A perusal of affidavit (Annexure P-7) of Sukhdev Singh-complainant shows that the revision petition so as to challenge the order

dated 1.8.2015 was initially filed on 6.11.2015. Since the limitation for filing of revision petition is 90 days and a period of about 3 weeks had been consumed for obtaining certified copy of order, therefore, the revision petition was filed well within limitation. After the revision petition was dismissed, the complainant preferred an appeal alongwith an application for condonation of delay under Section 14 of the Limitation Act. In the said application, it has been specifically stated by the complainant that he is a senior citizen and is less educated and does not have knowledge about the technicalities and that the mistake was on part of his previous counsel and that he should not be made to suffer on account of mistake of his counsel. Since the revision petition had been filed within the period prescribed for filing the petition though ultimately it was held that a revision petition was not maintainable, therefore, the delay, if any, in filing the appeal shortly thereafter cannot be said to be intentional and was apparently on account of a *bona fide* mistake arising out of wrong advise furnished by the counsel. Though, I do find that delay of each day in filing the appeal has not been explained by the complainant, but having regard to the facts and circumstances of the case and the fact that it was mainly on account of a wrong advise furnished by the counsel of the complainant, I do not find any infirmity in the impugned order.

As regards the contention of the counsel for the petitioner that the application ought to have been filed under Section 5 of Limitation Act and not under Section 14 of the Limitation Act, I find that mere incorrect mention of section or nomenclature would not matter and the application cannot be dismissed on this short score.

Before parting with the order, this Court is constrained to observe that the learned lower Appellate Court should have referred to the period of delay including the period spent for obtaining the certified copy of order while deciding the application. In view of the discussion made above, I do not find any infirmity in the impugned order condoning the delay and the same is upheld. There is no merit in this petition and the same is hereby dismissed.

9.7.2018

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No