

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

I.

**CRM-M-33558-2017 (O&M)
Date of Decision: 16.7.2018**

Sukhbir Singh and another

.....PETITIONER(s).

VERSUS

State of Punjab

.....RESPONDENT(s).

II.

CRM-M-25185-2016 (O&M)

Sukhdev Singh

.....PETITIONER(s).

VERSUS

State of Punjab and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. J.S.Dhaliwal, Advocate
for the petitioner.

Mr. Abhay Pal Singh Gill, AAG, Punjab.

Mr. S.S.Sidhu, Advocate,
for respondent No.2.

RAJ SHEKHAR ATTRI, J.(Oral)

This order shall dispose of both the aforesaid petitions as
common questions of law and facts are involved therein and both have

been disposed of with a common order.

The petitioner has challenged impugned order dated 9.5.2016 passed by learned Additional Sessions Judge, Bathinda vide which the revision petition was dismissed solely on the ground that the same was filed beyond the period of limitation.

FIR No.53 dated 13.11.2004 was registered for offence punishable under Sections 420, 465, 468, 34 IPC on the basis of an application moved to the Deputy Inspector General of Police, Bathinda alleging therein that Surjit Singh, Jugraj Singh, Amarjit Singh, Harbans Singh Jalal and Jarnail Singh have formed a company under the name and style of M/s Punjab Edibles Private Limited, Bathinda (in short, the Company) and all of them were the directors; that all the directors had purchased agricultural land measuring about 7 killas in village Gill Patti in Bathinda; that the company did not start its work, therefore, the above said land was managed under the supervision of said Amarjeet Singh.

It is further alleged that in the year 1995, Surjit Singh with the intention to grab the whole property, sold the same to his daughter Smt. Charanjit Kaur Sandhu wife of Sukhbir Singh Sandhu without the consent and knowledge of remaining directors. Thus, the above said sale deed was a sham transaction; that Jugraj Singh has executed a registered will in favour of the complainant. It has been alleged that the above said Jugraj Singh, Surjit Singh, Charanjit Kaur and Sukhbir Singh under a common intention created the above said sale deeds. Subsequently, Charanjit Kaur had executed a power of attorney in favour of Sukhdev Singh.

I have heard counsel for the parties and gone through the record.

Learned counsel for the petitioner has vehemently contended that Sukhdev Singh has absolutely no concern with the business and management of the company and that he was solely a care taker and he has absolutely no role, whatsoever, in the transaction or in the execution of the sale deed itself; and that both Charanjit Kaur and Sukhbir Singh were out of India; they have been declared proclaimed offenders without following due process of law and that learned revisional court failed to appreciate the reasons mentioned in the application under Section 5 of Limitation Act.

On the other hand, counsel for the respondents has submitted that the petitioner was hand in glove with the above said Charanjit Kaur and her husband Sukhbir Singh; that all the accused under a criminal conspiracy had committed the offences as observed by learned Magistrate.

This Court has given thoughtful consideration to the rival contentions of the parties.

It is apparent from the record that petitioner Sukhdev Singh in CRM-M-28185-2016 was neither director nor he has any concern with the company. It has been contended that he was neither instrumental in the execution of the sale deeds nor beneficiary nor a witness to the sale deeds, rather he came into picture solely on the basis of power of attorney executed by Charanjit Kaur. A bare perusal of the record transpires that he was not signatory to the sale deeds or any other transaction of the

company before execution of the sale deeds. The circumstances of the case requires that all these facts must be considered by the revisional Court but it failed to appreciate the same and dismissed the petition solely on the ground that it is filed beyond the period of limitation.

Both Sukhbir Singh and Smt.Charanjit Kaur (petitioners in CRM-M-33558-2017) have categorically pleaded in the application (P-16) that they are residing in Canada and thus, are the non resident Indians (NRIs) and were not aware of passing of the impugned order. Therefore, they could not file the revision within time, instead, the revision filed from the date of knowledge but they have been declared proclaimed offenders without following the provisions of Chapter VII-A of the Code. This Court is of the view that learned trial court must have considered the same before declaring them proclaimed offenders. Surprisingly, this fact has not been considered by learned revisional Court.

Besides that, it is well established that the limitation does not stand in the way to impart justice and to eradicate illegalities and infirmities in the proceedings before a criminal court. When it has come into the notice of the revisional court that both above said petitioners Sukhbir Singh and Charanjit Kaur are not in India, therefore, it should interfere with the impugned order.

Technicalities of law does not stand in the way of justice. Hon'ble Supreme Court in **Municipal Corporation of Delhi v. Girdharilal Sapuru and others**; 1981 (2) SCC 758 has observed as under : -

“5. It, however, appears that the respondents contended that the revision petition was barred by limitation. Even this contention is founded on a very technical ground that even though the revision petition was filed very much in time the requisite power of attorney of the learned advocate on behalf of the petition was not legally complete and when it was re-submitted the limitation had expired. Without going into the nicety of this too technical contention, we may notice that [Section 397](#) of the CrPC enables the High Court to exercise power of revision suo motu and when the attention of the High Court was drawn to a clear illegality the High Court could not have rejected the petition as time barred thereby perpetuating the illegality and miscarriage of justice. The question whether a discharge order is interlocutory or otherwise need not detain us because it is settled by a decision of this Court that the discharge order terminates the proceedings and, therefore it is revisable under [Section 397 \(1\)](#), Cr. PC and [-Section 397\(1\)](#) in terms confers power of suo motu revision on the High Court, and if the High Court exercises suo motu revision power the same cannot be denied on the ground that there is some limitation prescribed for the exercise of the power because none such is prescribed. If in such a situation the suo motu power is not exercised what a glaring illegality goes unnoticed can be demonstrably established by this case itself. We however, do

not propose to say a single word on the merits of the cause because there should not be even a whimper of prejudice to the accused who in view of this judgment would have to face the trial before the learned Magistrate.”

In the case in hand, the learned revisional court has failed to consider the reasons mentioned in the applications for condoning of the limitation. In the circumstances of the case, the applications filed under Limitation Act is liable to be allowed.

In view of the above, this Court is of the view that in view of the facts and reasons mentioned in the applications and other circumstances of the case, delay, if any, in filing the revision petition before the revisional court is condoned.

The moot question to be dealt by learned court below is as to whether the petitioners have any role in the transaction? This fact has not been considered by learned Magistrate. Therefore, it requires appreciation by learned revisional court. In this view of the matter, this court deems it appropriate to remand the case to learned revisional court for reconsideration.

In this view of the matter, both the revision petitions (CRM-M-33558-2017 and CRM-M-25185-2016) are hereby allowed and impugned order dated 9.5.2016 is set aside and the matter is remitted to the learned Revisional Court with a direction to decide the revision petitions on merits after giving parties adequate opportunity of being heard. Nothing expressed above will affect the merits of the case.

Parties are directed to appear before the Revisional Court on
20.8.2018.

July 16, 2018
Paritosh Kumar

(RAJ SHEKHAR ATTRI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>