

CRM-A-793-MA of 2012 (O&M)

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

CRM-A-793-MA of 2012 (O&M)
Date of Decision: 13.03.2019

Smt. Indrawati and others

...Applicants

Versus

Prabhu Dayal

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Navneet Singh, Advocate, for the applicants.
Mr. Vikram Punia, Advocate, for the respondent.

RAMENDRA JAIN, J. (ORAL)

CRM-56389 of 2012

Through instant application under Section 5 of the Limitation Act, prayer has been made for condonation of delay of 548 days in filing the accompanying application under Section 378(4) Cr.P.C.

Briefly, Wazir Singh husband of applicant No.1 and father of applicants No.2 to 4 filed a complaint under Section 138 of the Negotiable Instruments Act against the respondent, which, however, was dismissed in default on 19.01.2011 by the trial Court on a single default of non-appearance on behalf of the applicant.

Being aggrieved, Wazir Singh preferred revision, which was treated as appeal by the First Appellate Court and said order of trial Court dated 19.01.2011 was set aside by the Appellate Court vide order dated 21.09.2011.

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Being unsatisfied, respondent-accused came before this Court by way of petition under Section 482 Cr.P.C. bearing number CRM-M-31069 of 2011 for quashing said judgment of the Appellate Court dated 21.09.2011, restoring the complaint of Wazir Singh. During the pendency of the same, however, Wazir Singh expired and his legal heirs i.e. applicants were brought on record. A Co-ordinate Bench disposed of the said petition of the respondent vide order dated 24.08.2012, relegating the applicants to file appeal before the appropriate Court in accordance with law. Consequently, applicants being legal heirs of Wazir Singh preferred application under Section 378(4) Cr.P.C. along with instant application for condonation of delay of 548 days in filing the same.

Learned counsel for the applicant submits that on 21.02.2018, he sought time to file affidavit with better particulars in support of his contention, but after going through his earlier affidavit filed along with the application, there is no need to file second affidavit with any better particulars.

Heard.

Undisputedly, complaint of Wazir Singh predecessor of the applicants was dismissed in default for his non-appearance by the trial Court on 19.01.2011, which, in appeal, was set aside by the Appellate Court on 21.09.2011. However, respondent-accused challenged the said order of the Appellate Court before this Court vide CRM-M-31069 of 2011, which was disposed of on 24.08.2012, directing the applicants, being legal heirs of Wazir Singh complainant to file appeal before the appropriate Court.

Pursuant thereto, applicants have filed instant application. Therefore, delay

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of 548 days has occurred on account of above reason and not due to any deliberate or intentional negligence of the applicants.

Accordingly, application is allowed and delay of 548 days in filing the application under Section 378(4) Cr.P.C. is condoned.

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Through instant application under Section 378(4) applicants have sought leave to file appeal against order dated 19.01.2011 of the trial Court, dismissing the complaint of their predecessor-in-interest Wazir Singh on account of his non-appearance on single date.

Learned counsel for the applicants *inter alia* contends that complaint of Wazir Singh predecessor-in-interest of the applicants was dismissed on 19.01.2011 by the trial Court without appreciating the fact that on 23.12.2010, said complaint was adjourned to 15.02.2011, which was noted by his counsel on his brief and in the diary as well. However, Reader of the Court wrongly noted the date as 19.01.2011 on the judicial file. Therefore, for the said lapse of the Reader of the Court, complaint was dismissed illegally on 19.01.2011 in default for non-appearance of deceased Wazir Singh.

Heard.

Since, Reader of the Court had committed mistake in noting down wrong date on the judicial file for which Wazir Singh could not have been penalised by dismissing his complaint, therefore, by agreeing with the order of Appellate Court dated 21.09.2011, instant application is allowed. Order dated 19.01.2011 is set aside.

Parties are directed to appear before the trial Court on

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29.03.2019 with direction to it to proceed further with the complaint of the applicants, in accordance with law, by restoring the same to its original number.

March 13, 2019
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No