

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.43160 of 2013
and
Criminal Misc. No.A-852-MA of 2013

.....

Date of decision:16.01.2019

Puran Chand Grover

...Applicant

v.

Rakesh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Ashish Yadav, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.43160 of 2013:

This application has been filed under Section 5 of the Limitation Act read with Section 482 Cr.P.C praying for condonation of 563 days delay in filing the present appeal along with application under Section 378(4) Cr.P.C. seeking leave to appeal.

Notice of this application was given.

No one appeared on behalf of the respondent today. Earlier Mr. Amandeep Rana, Advocate has been appearing for the respondent, but later on none appeared for the respondent.

I have heard learned counsel for the applicant.

From the record, I find that in the application for condonation for delay, the applicant has stated that he attended each and every date of his complaint in the learned trial Court. But when on 2.6.2011, the complainant/applicant attended the learned trial Court, it was found that the concerned Ahlmad did not issue summons to the respondent/accused. Accordingly, with giving a warning to the concerned Ahlmad fresh notices were issued to respondent/accused for 13.08.2011. However, when on 13.08.2011, the complainant/applicant went to the learned trial Court, it was found that the learned Judicial Magistrate was on leave on that date and the case has already been adjourned for 28.10.2011. On 28.10.2011, when the complainant/applicant went to the Court to attend the proceedings, it was again found that the learned Judicial Magistrate was on leave. The complainant/applicant asked his counsel about the next date, but the counsel informed him that he is busy in some Court and he will inform the next date after some days. After that the complainant/applicant many times contacted his counsel and inquired about the proceedings and date of the case, but every time, it was told either by the counsel or by his office staff that the date in the complaint is much ahead and they will inform the applicant at the appropriate time. It has been mentioned that in this process almost 1½ years lapsed. In the month of August 2013, the complainant/applicant came in the Court and inspected the case file of his complaint. To his utter shock and surprise, it was revealed that his complaint had already been dismissed on 20.01.2012 for want of prosecution. Straightaway, the applicant went to his counsel and narrated the entire things. The counsel instead of feeling sorry got annoyed with the applicant and said that he was not aware of these

proceedings. It has been mentioned that facing with this situation, in the month of September, the applicant engaged the present counsel, who after collecting all the documents from the applicant has drafted the appeal and filed it in this Court on 26.09.2013. However, on 27.01.2013, the said appeal was returned by the Registry with certain objections. After collecting the paper book of the appeal, the counsel removed the objection and re-filed the said appeal on 03.10.2013. It has been mentioned that owing to the above reasons, there has been occurred delay of 563 days in filing the accompanying appeal. It has been stated that the delay in filing the appeal was not deliberate and intentional and the same was beyond the reach of the applicant.

I have gone through the application filed by the applicant. A perusal of the record shows that the delay has not been explained. No explanation or reason has been given for such a long delay. Rather, a perusal of the record shows that the applicant was grossly negligent in pursuing remedy. The complaint has been dismissed in default in 20.01.2012 due to the absence of the accused, but the accused has not approached the Court on the next date. Rather, a general averment has been made that he used to approach Advocate without giving any specific date, who told that he will tell the date after some time. Though, learned counsel for the complainant stated that he has made a complaint against the Advocate to the Bar Council, but he has stated that he has no knowledge about the result of the complaint. Even if it is taken that the counsel for the complainant has not appeared before the Court, the complaint has been dismissed in default, but at the same time, the complainant is supposed to

appear before the trial Court on each and every date. Being a complaint case, the complainant earlier also appeared before the Court on each and every date. But after the dismissal of the complaint on 20.01.2012, he kept silent for about one year ten months and now he has filed this appeal against acquittal, which itself shows that the applicant is grossly negligent in pursuing his remedy and no reason or explanation has been given for condoning the delay.

Therefore, no ground is made out for condoning the delay having no merit in the application.

I am cautious that the law condoning the delay is liberal one and the explanation given by the applicant is to be considered liberally, but in the present case no reasonable explanation has been given. Rather, the applicant is grossly negligent in pursuing his remedy.

Cr. Misc. No.A-852-MA of 2013:

As the application for condonation of delay has been dismissed, consequently, the application under Section 378(4) Cr.P.C. seeking leave to appeal is also dismissed.

January 16, 2019.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No