

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

CRM-A No.2593-MA of 2018 (O&M)
Date of Decision: 20.05.2019

State of HaryanaApplicant

Versus

Khalid and anotherRespondents

**CORAM :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present:- Mr. Arun Beniwal, Sr. D.A.G., Haryana
for the applicant.

DAYA CHAUDHARY, J.

CRM No.41240 of 2018

CRM-A No.2593-MA of 2018 has been filed under Section 378(3) Cr.P.C by the State of Haryana for grant of leave against the judgment of acquittal dated 11.01.2018 passed by the Additional Sessions Judge, Mewat after a delay of 183 days. An application for condonation of delay, duly supported by an affidavit, has been moved. In the application for condonation of delay, it has been mentioned that after obtaining the certified copy of impugned judgment, it was sent to Superintendent of Police, Nuh vide Memo dated 21.02.2018 to file an appeal before this Court, who after considering the opinion of the District Attorney, Nuh, sent all relevant documents to the Office of District Magistrate, Nuh on 14.03.2018. Thereafter, it was put up for opinion before the Law Officer who gave his opinion and the same was got approved by the Advocate General, Haryana.

However, the Additional Chief Secretary to Government of Haryana approved the case for filing appeal and delay of 183 days has occurred in filing of the appeal.

Although, an application for condonation of delay has been filed but no details whatsoever have been mentioned as to when the file was sent for having opinion and when it came back. Simply, it has been mentioned that in completing all the formalities, the delay of 183 days has occurred in filing of the appeal. Meaning thereby, the delay has not properly been explained and has been stated to have occurred in the process of taking legal opinion. A vague averment has been made in the application for condonation of delay. The application does not disclose sufficient ground to condone the delay of so many days in filing of the application for leave to appeal.

Article 114 of the Schedule to Limitation Act, 1963 provides that an appeal from an order of acquittal by the State is to be filed within a period of 90 days from the date of the order appealed from. While inserting the provision the Legislature, of course, had the internal administration of the State in mind. Previously the limitation period was 6 months, but subsequently it was decreased to 3 months. The Law Commission of India in its 3rd Report, on which the Limitation Act, 1963 was based and introduced in the Parliament, had observed that even this period is too long. The relevant portion is reproduced as under :-

"166. Article 157 provided a period of 6 months limitation for an appeal against an order of acquittal. The recent Act amending the Criminal Procedure Code has substituted a period of 3 months for 6 months. We do not propose any alteration of that period though we think that even the present period is too long to enable the State to make up its mind to file or not to file an appeal against an order of acquittal. ..."

The observation of the Apex Court in case ***Postmaster General***

Vs. Living Media India Ltd., (2012) 3 SCC 563 is as under:-

"29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. 30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay."

Same view was taken in another judgment of case **State Vs. Harihar, 2016 SCC Online Del 2354** and petition was dismissed on the ground of delay holding that reasons were mechanical and stereotyped.

In our view, the explanation for condonation of delay as mentioned in the application has not specifically been explained. The department was well aware that the period of limitation fixed for filing leave to appeal was 90 days but did not bother to know as to when the file was sent and what was its status.

It has been observed in various judgments/cases that State does not file appeal within the stipulated period and takes defence of procedural delay in obtaining approval/opinion. The State does not have the right to file appeals at belated stage on the ground of procedural delay. The State is expected to expedite the matter in case they want to prefer appeal against judgment of acquittal or conviction. No proper explanation has been given by the State in causing delay in filing of instant appeal.

The Legislature was wise enough while enacting Section 378 Cr.P.C. by giving 6 months time to the State to prefer an appeal against

judgment of conviction or acquittal as the case may be. The procedural delay as claimed by the prosecution cannot be a ground to condone the delay. If any delay is caused, the person responsible for the same is to be inquired and departmental action is required to be taken against him. Only under the exceptional circumstances, the delay, if any, caused by the State in filing the appeal is to be condoned in case the delay is properly explained of each and every day supported by documentary evidence.

Accordingly, we find no ground to condone the delay and the application for condonation of delay is dismissed.

On merits also, there is no force in the arguments of the application for grant of leave to appeal. On perusal of judgment of acquittal and the findings recorded by the trial Court, no infirmity has been found. The trial Court has acquitted the accused mainly on the ground that there were two co-incidence occurred at one place and at the same time. Accused-Hafiz allegedly fired from a short distance but no police men was hurt. The alleged used cartridge was not recovered by the police. SI Parduman was hit by a car from a short distance of 22 feet but did not receive a single physical injury. All accused gave a slip to the police and managed to escape from hugely and tightly fortified house. All these facts show that no such raid was conducted at the spot at the time of the incident. A finding has been recorded by the trial Court that accused Hafiz was booked being a person of questionable antecedents against whom a number of criminal cases were registered by the police which are still pending before various Courts. By giving the benefit of doubt, accused Hasam and Khalid were acquitted of the charge framed against them. At the end of the judgment, it is mentioned qua Hafiz that a red ink note be given on the file cover and it be not

destroyed and be put up as and when accused Hafiz is either arrested or surrenders before the Court.

Learned State counsel submits that the prosecution has proved its case beyond reasonable doubt. Learned counsel also submits that the trial Court has discarded the evidence of PW3-Inspector Naresh, who had specifically stated that on 07.07.2014, an informer came in CIA Staff, Rewari and told him that Hafiz was present at his house along with other co-accused, who were wanted in case FIR No.202 of 2007 under Section 380 IPC registered at Police Station Kasola and they were declared as proclaimed offender in said case. Learned counsel also submits that PW-7 Inspector Surender Singh, who was one of the members of the raiding party, made his statement but the same has not been believed. The accused persons suffered disclosure statements on the basis of which recovery of weapons was made. The evidence available on the file was not appreciated by the trial Court and the judgment of acquittal has wrongly been passed.

We have heard the arguments of learned State counsel and have also perused all necessary documents available on the file.

As per case of the prosecution, accused Hafiz fired a shot from a gun at SI Parduman but no injury was found on the person of said police official. Injured accused Hafiz was medico legally examined by Dr. Pankaj Vats, Medical Officer, CHC Tosham on 05.08.2014 and four injuries were found on his person. All injuries were dangerous to life and it was found that the same were caused by a firearm by the police. The accused persons managed to escape from the scene of occurrence and as such, the prosecution version appears to be doubtful.

By considering the findings recorded by the trial Court and on

consideration of the arguments raised by learned State counsel, it appears that the trial Court has appreciated the evidence properly and by giving the benefit of doubt, the accused were acquitted of the charge.

Hon'ble the Apex Court in the case of ***Murugesan and others Vs. State through Inspector of Police 2013 AIR (SC) (Cri) 126*** has laid down certain principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal and the same are reproduced as under:-

- (1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.
- (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
- (3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
- (4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
- (5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

In view of the facts and law position as discussed above, in absence of any manifest illegality, perversity or miscarriage of justice, the judgment of acquittal passed by the trial Court may not be interfered by the High Court in exercise of his appellate jurisdiction. There is no merit in the contentions raised by learned counsel for the applicant.

Accordingly, the application for leave to appeal is dismissed on

the ground of delay as well as on merit.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

20.05.2019

gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No