

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

Sr. No.211

**CRM-A-1472-MA-2014 (O&M)**

**Date of decision : 26.11.2019**

Raj Kumar

..... Appellant

**VERSUS**

Lakhwinder Pal

..... Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present: Mr. Amit Aggarwal, Advocate, for the appellant.

Mr. P.K.S Phoolka, Advocate, for the respondent.

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**SUDHIR MITTAL, J. (Oral)**

Vide judgment dated 18.5.2013, the trial Court acquitted the respondent of the offence under Section 138 of the Negotiable Instrument Act, 1881. The instant appeal has been preferred against the said judgment, but with a delay of 420 days.

Notice of the application for condonation of delay was issued and reply thereto has been filed on behalf of respondent.

Learned counsel for the applicant submits that within less than four weeks of the date of the judgment of acquittal, an appeal was erroneously filed before the Court of Session. On realizing that the appeal was not maintainable, application dated 11.4.2014 was filed for withdrawal thereof. The application was allowed on the same day and thereafter, a revision was filed against the judgment of acquittal. The revision was returned as not maintainable and thereafter, the present appeal has been filed. Thus, delay of 420 days has occurred and the same has been sufficiently explained.

Learned counsel for the respondent however, submits that the present appeal has been filed on 5.9.2014, whereas the appeal before the

period of five months between the withdrawal of the appeal filed before the Sessions Court and the appeal of appellant in this Court. The delay is not liable to be condoned.

From the aforementioned facts, it becomes clear that there is an unexplained period of five months between the date of withdrawal of the appeal before the Sessions Court and the date of filing of the present appeal. Although, in the application of condonation of delay, the filing of the revision and its return by the Registry is mentioned, but no dates are forthcoming. Under the circumstances, it cannot be held that the applicant-appellant has sufficiently explained the delay.

I have also gone through the judgment of acquittal passed by the trial Court. The reason given by the trial Court for acquitting the respondent is that the cheque in dispute was issued as a security cheque. This finding is supported by the evidence on record and the appellant has failed to explain when and how money was advanced to the respondent.

In view of above, the appeal is dismissed on account of delay as well as on merits.

**(SUDHIR MITTAL)**  
**JUDGE**

**26.11.2019**

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No