

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-8115-2018 (O&M)
Date of Decision:- 18.1.2019

Vishal Gupta ... Petitioner

Versus

Amrik Singh ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. D.V. Dhindsa, Advocate, for the petitioner.

GURVINDER SINGH GILL, J. (Oral)

1. By way of filing this petition, the petitioner seeks quashing of complaint No.Nact/1177/2016 dated 8.2.2016 as well as impugned order dated 24.2.2016 whereby the learned trial Court while condoning the delay of 78 days in filing of the complaint has proceeded to summon the accused.
2. The learned counsel submits that although the trial Court was fully competent to condone the delay but the same could not have been condoned without issuing any notice since upon expiry of limitation to file complaint a valuable right had accrued in favour of the accused.

3. I have heard the learned counsel for the petitioner and have also perused impugned order dated 24.2.2016. The relevant extract pertaining to the condonation of delay in the said order reads as follows:

“Heard on application for condonation of delay of 78 days in filing the complaint. The application is supported by an affidavit of complainant. Keeping in view the averments made in the application and in view of Ex.C11, same is allowed and the delay being duly explained with sufficient cause, is hereby condoned.....”

4. Apparently, when the aforesaid order was passed, the accused was not before the Court and that the said order condoning the delay was passed without affording any notice to the accused.
5. Hon’ble the Supreme Court in K.S.Joseph Vs. Philips Carbon Black Ltd. and another 2016(2) R.C.R. (Criminal) 788 while considering the aforesaid question in identical circumstances wherein the trial Court had condoned a delay of 62 days without issuing notice, set aside the order condoning delay and directed the Magistrate to reconsider the matter.
6. The facts of the present case when examined in light of ratio of the afore cited judgment leave no room for upholding the impugned order as regards the condonation of delay without issuing any notice to the accused. The impugned order dated 24.2.2016, as such, is set aside and the trial Court is directed to consider the matter afresh pertaining to condonation of delay after issuing notice to the accused

and to proceed afresh thereafter in case sufficient grounds are found justifying condonation of delay.

7. The petition stands accepted in the above mentioned terms.

January 18, 2019
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(GURVINDER SINGH GILL)
JUDGE

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