

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

CRM-A-729-MA-2016(O&M)

Date of decision:-2.3.2020

Om Parkash

...Applicant

Versus

Sumit Singh @ Kala Singh and others

...Respondent

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Surender Dhull, Advocate
for the applicant.

Mr.Gaganvir Singh Gill, Advocate for
Mr.S.P.S. Sidhu, Advocate
for respondents No.1, 3 and 5.

Mr.Chirag Girdhar, Advocate for
Mr.R.K. Girdhar, Advocate
for respondent No.6.

H.S. MADAAN, J.

Applicant – Om Parkash has filed this application under
Section 378(4) Cr.P.C. seeking special leave to appeal.

Briefly stated, facts of the case are that complainant – Om
Parkash son of Sh.Jaimal Ram, resident of village Gadda Dhob, Tehsil
Abohar, District Fazilka had brought a complaint under Sections 119,
166, 225-A, 419, 420, 120-B IPC against accused Sumit Singh @ Kala
Singh, Baltej Singh, Amandeep Singh, Gurbaksh Singh, Baltar Singh,
Chand Singh, Jagoop Singh and P.C. Bhangar, SD, PWD(Election
Officer) Abohar on the allegations that notification for election to the
post of Sarpanch of village Gadda Dhob, Tehsil Abohar was issued in
June, 2003; the complainant Om Parkash had filed his nomination

papers; similarly Sumit Singh @ Kala – respondent No.1 had also done so and he realising that he would not be able to get elected against Om Parkash, as such, a conspiracy was hatched, in terms of which nomination papers were submitted to respondent No.8 keeping column of first preference and column of second preference lying vacant and complainant came to know this later on that on 20.6.2003 nomination forms of complainant, Ravinder Kumar, Resham Singh, Iqbal Singh, Balwinder Singh, residents of village Gadda Dhob and accused Nos.3 to 7 were rejected by accused No.8 on the ground that the candidates themselves or their second and proposer had signed as a second and proposer of the other candidate; that the complainant protested stating that he never signed himself or his second proposer but respondent No.8 being part of the conspiracy declared respondent No.1 as Sarpanch unopposed since nomination papers of other candidates were rejected.

After recording of preliminary evidence, accused were accordingly summoned. Though proceedings against accused Baltej Singh were quashed by the High Court, whereas proceedings against Gurbaksh Singh stood abated on account of his death. Charge was framed. The trial proceeded. Statements of accused were recorded under Section 313 Cr.P.C. After hearing arguments, the learned Sub Divisional Judicial Magistrate, Abohar acquitted all the accused of the charges framed against them except accused Amandeep Singh. Accused Amandeep Singh was convicted for the offence under Section 420 IPC and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo rigorous imprisonment for six months.

It is pertinent to mention that the complainant has expired and the case was pursued by his son Yashpal, who felt aggrieved and he has knocked at the door of this Court by moving an application under Section 378 (4) Cr.P.C. for grant of special leave to appeal against the judgment of acquittal. It was filed belatedly by 652 days, as such an application under Section 5 of the Limitation Act has been filed contending the delay was not intentional or wilful but due to the fact that the complainant had approached the wrong form i.e. Court of Sessions at Fazilka filing an appeal there within period of limitation, which was marked to Additional Sessions Judge, Fazilka, however vide order dated 4.7.2015, the appeal was dismissed on the ground that since it was a complaint case, therefore appeal against acquittal was required to be filed before High Court after obtaining leave of the Court. It is stated that it is so happened on account of wrong legal advise.

Notice of this application was issued to the respondents, who has opposed this application tooth and nail.

I have heard learned counsel for the parties besides going through the record.

Section 3 of the Limitation Act, 1963 deals with Bar of Limitation providing that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

Section 5 of that very act provides that any appeal or any application may be admitted after the prescribed period if the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

In the instant case, the applicant has been unable to satisfy the Court that he had sufficient cause for not preferring an appeal within time. The explanation rendered is quite vague, which is not found to be convincing.

The entire story put up comes out to be suspicious and doubtful. The delay in this case is more than 1 ½ years. No satisfactory or plausible explanation has been rendered, which might have been taken into consideration to condone the delay. No doubt small delay in filing of appeal running into days or a few months can be condoned in the interest of justice but condoning delay of about two years without there being any cogent and convincing explanation would amount to nullifying Section 3 of the Limitation Act, which is not called for. The Apex Court in judgment **P.K. Ramachandran Versus State of Kerala, 1998 AIR (SC) 2276**, a case where delay of 565 days was condoned by the High Court in filing of the appeal for the reason that at the time Advocate General's office was flooded with many Arbitration matters equally important, had observed as under:

5. *Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This*

appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time. No costs.

In the present case the complainant through his legal heir approaching the Court of Sessions at Fazilka on the basis of alleged wrong legal advise cannot be justified. However, I find that the reasoning given does not appear to be convincing. Admittedly ignorance of law is no excuse and the gross delay, which is for more than 1 ½ years cannot be ignored in such a manner.

Thus I do not find any reason to accept the application under Section 5 of the Limitation Act and condoning the gross delay of 652 days in filing of the application for special leave to appeal. Even otherwise, on merits also no ground is there to allow the application in question. I do not find any illegality and irregularity in the judgment passed by the learned trial Court. Rather it is based upon proper appraisal and appreciation of evidence and correct interpretation of law.

Therefore, no ground is made out to grant special leave to appeal in this case. The application is, therefore dismissed accordingly.

2.3.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No