

CRM-A-1794-MA-2015

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

CRM-A-1794-MA-2015 (O & M)

Date of Decision: 13.03.2020

Man Singh

... Applicant

Versus

Sanjay and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Sanjay Verma, Advocate,
for the applicant.

Mr. Arun Dulgach, Advocate for
Mr. Abhimanyu Singh, Advocate,
for respondent No.1.

HARNARESH SINGH GILL, J.(Oral)

CRM-35586-2015

This is an application under Section 5 of the Limitation Act for condonation of delay of 275 days in filing the application seeking special leave to appeal under Section 378(4) Cr.P.C.

Learned counsel for the applicant contends that earlier, the applicant preferred an appeal before the Court of the learned Additional Sessions Judge, Gurgaon, and the same was dismissed on 14.09.2015 being not maintainable. Thereafter, the applicant approached this Court on 19.10.2015 and due to this reason, the delay of 275 days in filing the application seeking special leave to appeal, had occurred. The delay on the part of the applicant was not intentional.

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The said assertions have not been controverted by the learned counsel for respondent No.1.

I have heard the learned counsel for the parties.

It is an application which falls under Sections 5 and 14 of the Limitation Act for exclusion of the time spent bonafidely in the proceedings filed in the Court having no jurisdiction.

In view of the above, the present application is allowed and the delay of 275 days in filing the application seeking special leave to appeal, is condoned as the applicant was pursuing the case in another Court with due diligence.

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The complainant (applicant herein) has filed the present application under Section 378(4) Cr.P.C. for grant of special leave to appeal against the judgment dated 18.11.2014, vide which complaint under Sections 323, 324, 452 and 506 IPC was dismissed and the respondents were acquitted of the charges framed against them.

The facts, in brief, of the case are that the complainant filed a complaint against the respondents with the averments that on 15.11.2008, they had entered his house and given *lathi* blow to him and threatened him with dire consequences. On hearing the noise, his wife and son rescued him from them. The matter was reported to the police, but no action was taken.

After recording of the preliminary evidence, the respondents were summoned to face the trial under Sections 323, 452, 506 and 34 IPC and pursuant to the charge-sheet, the respondents pleaded not guilty and claimed trial.

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The Trial Court after appreciating the evidence acquitted the respondents of the charges framed against them, vide impugned judgment dated 18.11.2014.

Being dissatisfied with the impugned judgment, the applicant preferred the appeal which was dismissed by the learned Additional Sessions Judge, Gurgaon, vide judgment dated 14.09.2015.

Learned counsel for the applicant points out that the impugned judgment passed by the trial Court is against the facts of the case. He draws the attention of this Court to the copy of DDR (Ex.P-4) got recorded by the complainant on 14.11.2008, whereas the trial Court in para No.6 of the impugned judgment drew the conclusion that the DDR had been got recorded on 23.11.2008 i.e. after a delay of 09 days. The conclusion drawn by the trial Court that the DDR (Ex.P-4) was got recorded by the complainant on 23.11.2008, is apparently against the fact.

This fact has not been disputed by the learned counsel for respondent No.1.

I have gone through the DDR (Ex.P-4) produced before this Court. It is axiomatic on the perusal of the DDR (Ex.P-4) that the same was got recorded by applicant-Man Singh on 14.11.2008. The learned trial Court has wrongly observed that the DDR was lodged after a prolonged delay of nine days. Thus, the findings recorded by the trial Court are absolutely illegal, unjust and arbitrary and the same are liable to be set aside.

In view of the above, the impugned judgment dated 18.11.2014 passed by the learned Judicial Magistrate Ist Class, Gurgaon, is set aside

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and the matter is remanded to the trial Court for deciding the same afresh in accordance with law. Parties through their counsel are directed to appear before the trial Court on 22.04.2020.

13.03.2020

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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