

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

**CRM-A-841-MA-2014(O&M)**

**Date of decision:-17.3.2020**

Jatinder Paul Bhagi

...Applicant

Versus

Hardyal Thakur

...Respondent

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

**Argued by :**Mr.P.S. Ahluwalia, Advocate  
for the applicant.

Mr.M.S. Sachdev, Advocate  
for the respondent.

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**H.S. MADAAN, J.**

Applicant – Jatinder Paul Bhagi 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 – Jatinder Paul Bhagi had filed a complaint under Sections 325/34 IPC against accused Hardyal Thakur and Kala @ Rajinder Kumar, both residents of 96/9 Central Town, Backside Geeta Mandir, Opposite Park, Jalandhar City. As per the case of the complainant on 18.7.1995, he had a minor scuffle with his colleague and co-employee – R.K. Khanna in Bank of India, Mai Hira Gate Jalandhar; accordingly an inquiry into the matter was instituted; Kuldeep Singh Thakur, a union leader of the bank, then working as General Secretary of the union appeared as a defence

representative for R.K. Khanna. According to the complainant because of the party factionalism Kuldeep Singh Thakur was bent upon to take benefit of the minor incident involving the complainant and R.K. Khanna so as to get the complainant suspended from his job, however, when Kuldeep Singh Thakur failed in that endeavour, he got angry and threatened the complainant that he would not allow the complainant to live a peaceful life; on 16.1.1996 when the inquiry in respect of the incident in question was going on, it was stopped temporarily on account of lunch time; during the lunch time, the complainant came out of the bank premises at about 2:00 p.m.; at that time Hardyial Thakur, a brother of Kuldeep Singh Thakur along with Kala alias Rajinder Kumar and another person intercepted the complainant and took him forcibly to the *deori* of the street, which was of the box factory adjoining the bank; thereafter Hardyial Thakur blurted that because of the fact that the complainant was going against his brother, for that reason the accused had come to teach him a lesson, then Hardyial Thakur gave a punch blow on the face of the complainant, as a result of which, tooth of the complainant fell out; thereafter the complainant was thrown on the ground by accused Hardyial Thakur and Kala alias Rajinder Kumar along with another person not known to the complainant; while the complainant was lying on the ground, Hardyial Thakur gave kick and fist blows to complainant, whereas Kala @ Rajinder Thakur gave him slaps and kick blows in the stomach, at his back and on his face; the third person accompanying both the accused had abused the complainant giving hand and foot blows to him; the complainant raised alarm to save himself, on hearing which one Ashwani Kumar, a bank customer and

Dalip Singh Bhatia came to the spot and witnessed the entire occurrence; in the meanwhile a few more persons arrived at the spot; on seeing them, all the three assailants ran away from the spot; Dalip Singh and Ashwani Kumar had taken the complainant to Civil Hospital, Jalandhar, where he was medico legally examined; as per the MLR of the complainant dated 16.1.1996, he had sustained eight injuries, of which two injuries were grievous and x-ray was advised, whereas the other injuries were found to be simple in nature.

An FIR was registered pertaining to that incident on 20.1.1996. Despite registration of the FIR, the police of Division No.3, Jalandhar did not take any action against the accused persons, therefore, the complainant was forced to file a private complaint in the Court of Judicial Magistrate Ist Class at Jalandhar.

After recording of preliminary evidence, accused Hardyal Thakur and Kala @ Rajinder Kumar had been summoned to face trial for the offences under Sections 325 read with Section 34 IPC vide order dated 26.4.1997. Both the accused put in appearance and were admitted to bail. Copies of documents relied upon in the complaint were supplied to them free of costs as envisaged under Section 207 Cr.P.C.

The case was fixed for pre-charge evidence of complainant, during the course of which the complainant got his own statement recorded as CW1 besides examining Ramesh Kumar as CW2, Dalip Singh as CW3 and Ashwani Kumar as CW4.

Thereafter, finding a prima facie case, charge for the offences under Sections 325, 325 read with Section 34 IPC and 323 IPC was framed against the accused, to which, they pleaded not guilty and

claimed trial.

During the post charge evidence, the complainant got his own statement recorded and in addition to that he examined Dr.Ramesh Kumar, Dalip Singh and Ashwani Kumar besides producing documents in evidence.

With that the post charge evidence was closed.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they are innocent and they have been falsely implicated in the case further pleading that no such incident had taken place.

In defence evidence, accused examined DW1 Ram Narain, DW2 Bal Krishan, DW3 Avinash Kumar, DW4 Krishan Kumar, DW5 Daljitam Singh, DW6 Rajiv Kumar and DW7 R.K. Sharma.

After hearing arguments, learned trial Magistrate dismissed the complaint and acquitted the accused of the charge framed against them.

The reasons for arriving at the said conclusion were as under:

- (i) Absence of motive on the part of accused to attack the complainant and cause injuries to him and motive suggested being weak and farfetched.
- (ii) In the inquiry against the complainant, Kuldeep Singh Thakur was merely representative of R.K. Khanna and by no stretch of imagination, it could be reckoned that his representative or any right could have been produced by the fact that complainant was

likely to be absolved in the inquiry.

(iii) Furthermore, it was Kuldeep Singh Thakur, who had attacked the complainant, rather allegedly it was brother of Kuldeep Singh Thakur and his accomplices, in that way, the delegation of motive from Kuldeep Singh Thakur for his brother and associates of his brother has further diluted the intensity of the motive.

(iv) The very story set up by the complainant comes out to be doubtful and unconvincing.

(v) Material contradictions between the statements of complainant and other eye-witnesses, namely CW Ashwani Kumar regarding the manner and details of the incident.

(vi) Absence of enough cogent and convincing medical evidence to show that tooth of the complainant knockout by the fist blow given by the accused No.1 Hardyal Thakur.

(vii) CW Dalip Singh and CW Ashwani Kumar being known to the complainant happened to be interested witnesses and there being numerous and substantial inconsistencies and discrepancies in their statements.

(viii) Absence of independent corroboration to the version of complainant.

(ix) The guilt of the accused has not been proved on the record beyond a shadow of reasonable doubt.

(x) Medical evidence not supporting the ocular evidence. CW2 Dr. Ramesh Kumar, who had medico legally examined the complainant in his cross-examination had though admitted it as correct that with one fist blow particular tooth can be broken but

then he clarified the matter stating that it was not possible as tooth was missing and not broken in this case. Therefore, it puts a big question over truthfulness of the prosecution story.

(xi) The incident in the case had taken place on 16.1.1996 at about 2:00 p.m., whereas the complaint was filed on 28.11.1996 i.e. after a period of more than 10 months.

This judgment left the complainant aggrieved and he had 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 may be mentioned here that Kala alias Rajinder Kumar had expired after pronouncement of the impugned judgment. Then special leave is being sought against accused Hardyal Thakur only.

The application was filed belatedly by 1700 days, as such an application under Section 5 of the Limitation Act has been filed along with the application.

Notice of this applications was issued to the respondent/accused, 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 delay in this case is of more than four 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 more than four 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.*

Thus I do not find any reason to accept the application under Section 5 of the Limitation Act and condoning the gross delay of 1700 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.

Though according to the complainant he had lodged an FIR with regard to the incident on 20.1.1996 itself but the police had not taken any action in the matter despite various reminders and representations. There is delay in reporting the matter to the police even inasmuch as with regard to the incident, which had taken place on 16.1.1996, FIR was lodged on fourth day i.e. 20.1.1996.

Needless to say prompt lodging of the F.I.R. unlike this case here provides spontaneous and blemish version of the incident and with the passage of time the element of truth gets diluted and chance a coloured version being introduced after due deliberation and consultations come out to be there.

Learned counsel for the respondent has referred to a Division Bench judgment of this Court i.e. **State of Haryana Versus Aman Kumar and another, 2012(3)RCR(Criminal)330** wherein dealing with aspect of appeal against acquittal of an accused in a criminal case, when a petition had been filed by the State seeking leave to appeal against the said judgment of acquittal, while dismissing the petition it

was observed that when view taken by the trial Court, is not in any way unreasonable, perverse or impossible, rather in the facts and circumstances of the case and the evidence led by the prosecution, the second view is not possible and plausible, the petition was declined.

I find that the judgment referred to by learned counsel for the respondent is applicable to the facts of the present case. As observed in the authority in question, the trial Court had the distinct advantage of watching the demeanor of the witnesses and was better place to evaluate their credibility.

The trial Court has taken into consideration the law on the subject and given valid and proper reasoning before coming to the conclusion that since the complainant had failed to prove his case against the accused beyond a shadow of reasonable doubt.

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

**17.3.2020**  
**Brij**

**(H.S.MADAAN)**  
**JUDGE**

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**