

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

Sr. No.224

CRR-1046-2020 (O&M)
Date of decision : 3.11.2020

Dinesh @ Neshu

..... Petitioner

VERSUS

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Saurabh Sharma, Advocate, for the applicant-petitioner.

Mr. Munish Sharma, A.A.G., Haryana.

SUDHIR MITTAL, J. (Oral)

The petitioner has been convicted under Section 42-A of the Prisons Act, 1894 and has been sentenced to undergo RI for a period of 02 years for being found in possession of a mobile phone.

Against the order of conviction and sentence, the statutory appeal has been dismissed on the ground of limitation.

Learned counsel for the petitioner has relied upon **State of Odisha Vs. Surendra Munda, 2020 (4), RCR (Criminal), 286,** and submits that in criminal cases, first appeal should not be dismissed on the ground of limitation. He further prays that the petitioner has been in custody for more than 01 year and a minor offence has been committed by him and thus, his sentence be reduced to the period already undergone by him.

Custody certificate dated 2.11.2020 has been produced in Court and the same is taken on record. According to this certificate, the petitioner has undergone actual custody of 01 year, 01 month and 11 days.

Learned State counsel concedes that in a case of conviction, in a criminal case, first appeal should not be dismissed.

The judgment of the Supreme Court in **Surendra Munda's case (supra)**, has been perused. It has been held therein that a first appeal against conviction should not be dismissed on the ground of limitation. Thus, the appellate Court was in error in dismissing the appeal on the ground of limitation. Accordingly, the revision petition is allowed and order dated 6.12.2019 passed by the learned Additional Sessions Judge, Kaithal, is set aside. The matter is remitted to the same Court for deciding the appeal on merits and in accordance with law.

(SUDHIR MITTAL)
JUDGE

3.11.2020

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No