

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revision No.1085 of 2020 (O&M)

Date of Decision: October 09, 2020

Vipin Sharma @ Vipin Kumar Sharma

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Deepak Verma, Advocate,
for the petitioner.

Mr. C.L.Pawar, Sr.DAG, Punjab.

MANOJ BAJAJ, J.

Vipin Sharma-convict has filed this criminal revision against the orders dated 11.01.2017 and 16.01.2019 passed by appellate court, whereby, firstly his application for condonation of two days delay in filing the criminal appeal against the judgment of conviction dated 08.12.2016 passed by the trial court was permitted to be withdrawn, and later the appeal bearing No.CRM/13/2017 was also dismissed qua the petitioner. The prosecution of the petitioner arose from FIR No.28 dated 28.05.2010, under Sections 392, 342, 34 IPC and Section 25 Arms Act, Police Station, Behram.

Learned counsel for the petitioner contends that the petitioner along with his co-accused was put to trial in the above FIR and the same ended in his conviction by way of judgment dated 08.12.2016 and sentence of three years rigorous imprisonment was imposed upon the convicts. He further submits that aggrieved against the said judgment of conviction, an appeal was filed by both the convicts jointly which carried a delay of two

days and a separate application for its condonation was also filed. Learned counsel for the petitioner has invited the attention of the Court to the appellate court order dated 11.01.2017 to contend that only on the statement of his counsel, the application for condonation of delay was withdrawn, and at the same time, the notice of the appeal qua co-convict was issued to the State. Learned counsel has argued that as the application for delay stood withdrawn, therefore, subsequently his appeal was dismissed on 16.01.2019 by the appellate court. He has further contended that the counsel withdrew the application on the ground that the appellant has not contacted him and, therefore, the appellate court ought to have issued notice to the appellant before accepting the prayer. It is pointed out that the acceptance of the request of the counsel for the appellant has adversely affected the petitioner as the appeal was finally dismissed without hearing the appellant. According to learned counsel, the appeal filed by the co-convict is pending adjudication, therefore, he prays that the appeal of the petitioner be also restored for decision on merits.

On the other hand, the prayer is opposed by the learned State counsel on the ground that the revision petition contains the delay of 339 days, however, the factual aspects are not disputed by him. He has referred to the reply filed by way of affidavit of Gurvinder Pal Singh, PPS, Deputy Superintendent of Police, Banga. It is further contended by the learned State counsel that the petitioner (appellant) was not diligent to pursue his appeal and, therefore, he has failed to explain the delay in filing this revision. According to him, once the appellant was represented by his counsel, therefore, he cannot plead ignorance in respect of the impugned orders passed by the appellate court. He has further submitted that the request for

withdrawal is made every day before the Courts and, therefore, upon acceptance of the prayer, the litigant is bound by it. He prays that the revision petition be dismissed.

At this stage, learned counsel for the petitioner submits that the orders dated 11.01.2017 and 16.01.2019 were never communicated to him either by his counsel or the appellate court and the petitioner acquired the knowledge only when the warrants were issued to his surety by the Chief Judicial Magistrate, S.B.S. Nagar.

After hearing the learned counsel for the parties, this Court finds that the limited issue raised in the petition relates to the withdrawal of the application for condonation of delay and the subsequent dismissal of appeal by the appellate court and these facts are not in dispute. A perusal of order dated 11.01.2017 does not indicate specific reasons for withdrawal of the application under Section 5 Limitation Act, 1963 and contains reference to the statement of the counsel for the appellant. This Court finds that since the appeal was filed jointly and the same remained alive, therefore, there was no occasion for the petitioner to know about the fate of his application or the appeal till the notice was issued to his surety by Chief Judicial Magistrate, S.B.S. Nagar on 18.01.2020 (Annexure P-3). The argument of the learned State counsel that as the revision has been filed with 339 days delay, which has gone explained, is not acceptable as in the given facts, there is nothing to show that the petitioner was aware of the orders dated 11.01.2017 and 16.01.2019, as the same were never communicated to him. Therefore, this Court finds that delay in filing the revision petition deserves to be condoned. Accordingly, CRM-20140 of 2020 is allowed.

No doubt, every day the counsel make prayers before the

Courts for withdrawal of applications or petitions and such a authority is conferred upon them by their clients by execution of power of attorney. But at the same time, the Courts have to be careful before accepting such a prayer and must examine the consequences of the withdrawal, keeping in mind the nature of the petition and the prayer made therein. Though no straight jacket formula can be laid for acceptance of such a prayer, as it would always depend upon the facts and essence of each case. Ordinarily, the prayer for withdrawal of application or petition is made at a particular stage and acceptance thereof does not affect the rights of the litigant on whose behalf the prayer is made, as either he/she can subsequently file the petition seeking the same relief or may avail the alternative remedy in law. But, in cases, where the acceptance of request for withdrawal of the application or the petition would cause prejudice to the litigant by leaving him without redress, in that eventuality, the Court must not only seek explanation from the counsel, who makes the prayer, but should itself mention the reasons for acceptance in the order. The acceptance or refusal of such a prayer by Courts is discretionary in nature and, therefore, it needs to be exercised on the strength of the sound judicial principles.

It needs to be constantly borne in mind that in criminal law, there is only one remedy of appeal, therefore, it acquires much importance and the said remedy cannot be allowed to be defeated on technical grounds. The acceptance of the request for withdrawal by the court virtually rendered the main appeal meaningless, though the same remained pending till it was formally dismissed on 16.01.2019. This adversely affected the statutory right of the convict and, therefore, the appellate court ought to have issued notice to the convict. Appellate Court without considering the impact of the

withdrawal of the application for condonation of delay, accepted the prayer made by his counsel and proceeded with the appeal of the co-convict.

This Court, while deciding the plea of a convict against dismissal of criminal appeal for non-prosecution, considered the significance of right to appeal in Criminal Revision No.3535 of 2018 titled as “Subhash Chandra Maheshwari Versus Raju Solanki, wherein following observations were made:-

“Further, the principle of natural justice, which is the soul of our criminal jurisprudence is violated whenever the appellate court refuses to decide the appeal without examining the merits or hearing the appellant or his pleader. This rule is well embedded not only during the course of the trial proceedings, but has equal importance at the appellate stage also. Of-course, the trial proceedings may carry more procedural aspects, but an appeal against conviction is founded on substance, whereupon the judgment of trial court is based, therefore, the appellate court is not supposed to pay much importance to the procedural aspect, over and above the material substance, otherwise, the purpose of appeal would stand defeated. The important features of natural justice are well recognized in our criminal jurisprudence which include the recordings of reasons as necessity of a fair decision. Therefore, it is always desirable to deliver reasons for arriving at a conclusion after examining the merits of the appeal.

Examining this aspect from another angle, it is clear that depriving a convict from his solitary right of appeal as provided by the statute would certainly curtail his right to life and liberty which is guaranteed by Article 21 of the Constitution of India. No person can be deprived by his personal liberty except according to procedure established by law. The right of appeal is not just a formality but is an effective remedy in law given to the aggrieved person to knock the doors of the appellate court to seek justice. In a given

situation, the Court is well within the jurisdiction to seek assistance from the legal aid establishments by the State Government or may appoint a counsel to represent the convict for rendering assistance.”

Now analysis of the facts of the case in hand, makes it clear that the petitioner had preferred the statutory appeal to challenge the trial Court verdict of conviction, therefore, considering the nature of the case and the relief claimed therein, the appellate court wrongly proceeded to accept the prayer made by his counsel for withdrawal of application for condonation of delay, on the first day of its presentation. Merely because the appellant failed to contact his lawyer, it would not offer a ground for the counsel to extinguish convict's right to appeal, as alternatively the counsel could have requested for withdrawal of the power of attorney, for no instructions. Apparently, the prayer made by the counsel for the appellant for withdrawal of application for condonation of delay was against the interest of the appellant, as it attached finality to the judgment of conviction, thereby leaving no remedy for him, but to serve the sentence. Even otherwise, it does not appeal to common sense that once the convict has chosen to challenge the judgment of conviction, why he would abandon his statutory right abruptly to embrace the punishment recorded by the trial Court.

Apart from the above, it is apparent from the facts and circumstances of the case that the impugned orders stand in stark contradiction to the principle of *Actus Curiae Neminem Gravabit*, which not only ensures justice and good sense, but also operates as a guide for administration of justice. Thus, it is evident that the appellate court failed to exercise the necessary caution while accepting the request for withdrawal of the application and subsequently dismissing the appeal on the ground of

delay without realising that the only statutory remedy available to the convict was being rendered infructuous. Therefore, this Court has no hesitation in holding that the orders dated 11.01.2017 and 16.01.2019 suffer from grave illegality and impropriety, as a serious prejudice has been caused to the petitioner (appellant).

Resultantly, the revision petition is allowed and the impugned orders are set-aside and it is ordered that the appeal filed by the petitioner be decided on merits in accordance with law after hearing the convict or his pleader.

October 09, 2020
ramesh

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No