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

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CRR No.1273 of 2020 (O&M)

Date of decision : 15.02.2021.

Gurpreet Singh @ Bunty

... Petitioner

Versus

State of Punjab

.. Respondent

CORAM :HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Manmeet Singh Rana, Advocate for the petitioner(s).

Anupinder Singh Grewal, J. (Oral)

CRM No.29082-2020

This is an application seeking condonation of delay of 1045 days in filing the revision petition.

Learned counsel for the applicant/petitioner contends that on the very first date i.e. 06.02.2017, the counsel made a statement without the consent and knowledge of the appellant that he wants to withdraw the appeal on his behalf. The petitioner was unaware of the factum of the withdrawal of the appeal and was confined in New Life Rehabilitation and Counselling Society at village Garha, Tehsil Phillaur, district Jalandhar at Government Hospital for De-addiction. He was released from the Government De-addiction centre in June, 2018 after the intervention of this Court in a *habeas corpus* petition bearing CRWP No.87 of 2018. The petitioner, in the month of December, 2019 contacted his counsel to know the fate of his appeal but learnt

that the appeal had been withdrawn by the counsel on 06.02.2017 without any instructions from him.

Issue notice in this application.

At the asking of the Court, Mr. Dhruv Dayal, Senior DAG, Punjab, accepts notice on behalf of the respondent.

Heard. In view of the above, the application is allowed and delay of 1045 days in preferring the revision petition is condoned.

CRR No.1273 of 2020 (O&M)

The petitioner has challenged the order passed by the Appellate Court on 06.02.2017, whereby his appeal was dismissed as withdrawn.

Learned counsel for the petitioner contends that the petitioner was an accused in FIR No.96 dated 23.09.2014, under Sections 382, 34 IPC, registered at Police Station Sadar, Nawanshahr. He was convicted by the trial Court to undergo rigorous imprisonment under Section 382 IPC for a period of two years and to pay a fine of ₹500/- and in default thereof to undergo simple imprisonment for a period of 07 days. He further contends that the petitioner had preferred an appeal thereagainst before the Additional Sessions Judge, SBS Nagar. The appeal had come up for hearing on 06.02.20217 whereon the counsel made a statement without the consent and knowledge of the appellant that he wants to withdraw the appeal on his behalf. The petitioner was unaware of the factum of the withdrawal of the appeal. He was confined in New Life Rehabilitation and Counselling Society at village Garha, Tehsil Phillaur, district Jalandhar and thereafter in the Government Hospital for De-addiction. He was released from the Government De-addiction Centre in June, 2018 after the intervention of this Court in a habeas corpus petition bearing CRWP No.87

of 2018. The petitioner, in the month of December, 2019 contacted his counsel to know the fate of his appeal but learnt that the appeal had been withdrawn by the counsel on 06.02.2017 without any instructions from the petitioner. He also contends that the petitioner has undergone sentence of about 01 year and 03 months and is not involved in any other criminal case.

Learned State counsel has filed reply along with custody certificate of the petitioner which indicates that he is at present in Central Jail, Ludhiana and has undergone sentence of 01 year, 02 months and 28 days as on 13.02.2021.

Heard.

The filing of the appeal is a valuable statutory right of a convict. The Appellate Court re-appreciates the evidence and while doing so may correct an error committed by the trial Court in convicting the accused. The appeal preferred by the petitioner had been withdrawn by his counsel. The counsel may plead no instructions and withdraw from the case but to withdraw an appeal against conviction and sentence would spell disastrous consequences for the appellant as he would remain a convict and serve the entire sentence. The conduct of the advocate needs to be deprecated as he has withdrawn the appeal in utter disregard of his professional duty. The Appellate court ought to have been more circumspect and not allowed the withdrawal of the appeal at the drop of a hat. In the event of the counsel making such a statement for withdrawal of the appeal against conviction, it would be appropriate for the Court to issue notice to the appellant and if the appellant is unable to afford a counsel to represent him, a counsel from the Legal Aid Services could be provided to the appellant and the appeal be heard and decided on merits. The

withdrawal of the appeal by the counsel has led to the petitioner being taken into custody and he has undergone the sentence of nearly one year and 03 months out of the total sentence of 02 years. It has also resulted in the violation of Article 21 of the Constitution of India which guarantees the right of life and liberty and nobody can be deprived of this right except through procedure established by law.

It would thus be in furtherance of equity, justice and fair play if this petition is allowed and the appeal preferred by the petitioner is restored and decided on merits. The petitioner has undergone sentence of about 01 year and 03 months out of the total sentence of 02 years.

Consequently, the petition is allowed and the order passed by the Appellate Court dated 06.02.2017 is set aside. The appeal would be restored to its original number, heard and decided on merits by the Appellate Court.

The sentence of the petitioner shall remain suspended during the pendency of the appeal and he shall be released by the Appellate Court subject to his furnishing bonds to its satisfaction.

(ANUPINDER SINGH GREWAL)
JUDGE

February 15, 2021
sonia gugnani

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No