

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

CRM-M-5101-2022

Date of decision: 24.08.2022

Bijender

...Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Akshay, Advocate, for
Mr. Rahul Jaswal, Advocate, for the petitioner.

Ms. Aditi Girdhar, AAG, Haryana.

Mr. Rajesh Duhan, Advocate, for respondent No. 2
(legal aid counsel)

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AMAN CHAUDHARY, J. (ORAL)

The learned Additional Sessions Judge, Panipat, vide order dated 22.11.2021 (Annexure P-9) has dismissed the revision petition filed by the petitioner on the ground of delay of 54/55 days in filing the same.

Notice of motion was issued on 08.02.2022 in this case by this Court on a contention raised by the petitioner that the learned Sessions Judge has not examined the issue raised by the petitioner on merits.

Learned counsel for the petitioner restricts his challenge to only order dated 22.11.2021 (Annexure P9) passed by the learned Additional Sessions Judge, Panipat whereby criminal revision

was dismissed being time barred and that no document regarding illness had been placed on record. He does not press the challenge of the order dated 04.04.2019 passed by the learned Judicial Magistrate Ist Class, Samlakha, District Panipat (Annexure P-7), vide which application under Section 300 Cr. P.C and under Article 20 (2) of the Constitution of India has been dismissed, which was subject matter of challenge in the revision. The grievance of the petitioner is that the learned trial Court dismissed the criminal revision only on the ground of it having been filed after the period of limitation and that there is an unexplained delay of 54/55 days.

Learned counsel for the petitioner submits that the said delay had occurred on the account of the fact that the applicant-revisionist was taking treatment and his medical condition was not good. Due to the said fact, he could not file the above revision in time. He further submits that in case the period of delay is not condoned, the applicant-petitioner shall suffer grave prejudice.

Learned counsel for respondent No. 2 has no objection in case the order is set aside and the learned appellate Court is directed to hear the revision on merits.

Heard the learned counsel for the parties.

As is apparent from the impugned order that the petitioner had filed an application for condonation of delay wherein specific reasons of him suffering from various diseases for which he was taking regular treatment had been mentioned.

The Hon'ble Madras High Court vide judgment dated 09.02.2019 in the case of A.Narayanmoorthy vs. Poovaragavan and another had allowed the petition under Section 482 Cr.P.C. and set aside the order passed by learned Principal Sessions Judge, Pondicherry, which had dismissed the revision on the ground of delay. The relevant paras 4 to 6, 8, 14 of the judgment reads as under: -

"4. Challenging the same, the petitioner has intended to file a revision. But the same has not been filed within the period of limitation. Therefore, the petitioner/ complainant filed Crl.M.P.No.250 of 2018 before the learned Principal Sessions Judge at Puducherry, praying to condone the delay of 93 days in filing the Criminal Revision Petition.

5. The learned Principal Sessions Judge, Puducherry, after affording an opportunity to the respondents by order dated 09.02.2019, had dismissed the said application. Aggrieved over the same, the petitioner is before this Court with this Criminal Original Petition, praying to set aside the order dated 09.02.2019 made in Crl.M.P.No.250 of 2018. <http://www.judis.nic.in> Crl.O.P.No.11765 of 2019.

6. The first and foremost contention raised by the learned counsel appearing for the petitioner is that only due to his suffering from chronic disease, the petitioner was not able to prefer the Criminal Revision Petition in time. Further, the delay required to be condoned is only 93 days. But the learned Principal Sessions Judge, Puducherry, without seeing the merits of the revision petition and without mentioning any proper reason, refused to condone the delay. Ultimately, he dismissed the application, which is erroneous in law.

8. Now, on considering the rival submissions made by the learned counsel appearing on either side and also on going through the impugned order passed by the learned Principal Sessions Judge, Puducherry, it seems that the application filed for condoning the delay was dismissed on two grounds. The learned Principal Sessions Judge, Puducherry, has specifically observed that in the application filed by the petitioner, he has not stated as to against which order he has preferred the revision petition. Further, for proving the illness of the petitioner, no document has been produced along with the petition. Also, for calculating the delay, the necessary particulars

which are required were not furnished and therefore, the petition is liable for dismissal.

14. Only in the said circumstances, the petitioner herein approached the learned Principal Sessions Judge, Puducherry, for revising the said order. But, due to the reason that the same has not been filed within the period of limitation, he filed an application for condoning the delay. Therefore, the grievance addressed by the petitioner, is only in accordance with the order passed by this Court. No doubt, it is open to the learned Principal Sessions Judge, Puducherry, to decide the issue after perusing the impugned order passed by the learned Judicial Magistrate No.IV, Puducherry. In otherwise, this Court is of the considered opinion that the reasons stated by the learned Principal Sessions Judge, Puducherry, is a technical one and therefore, the same warrants interference by this Court and accordingly, the Criminal Original Petition is allowed. Consequently, the delay of 93 days in filing the Criminal Revision Petition is condoned. The Principal Sessions Judge, Puducherry is directed to number the <http://www.judis.nic.in> CrI.O.P.No.11765 of 2019 Criminal Revision Petition filed by the petitioner and dispose of the same, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.”

In the case in hand also, the petitioner herein had also given reasons of his suffering from various diseases and taking treatment for the same, which caused delay of 54/55 days in filing the revision petition. Even in the case of **A Narayanmoorthy** (supra) being relied upon, the petitioner had given reasons of suffering from chronic diseases, which led to delay of 93 days in filing the revision.

The learned Additional Sessions Judge in the present case has dismissed the criminal revision on the ground of delay on account of the fact that the petitioner had not produced any document to prove his illness, which was also the reason given by learned Principal Sessions Judge, Pondicherry for not condoning delay in the case of **A Narayanmoorthy** (supra) being relied upon.

The solitary grievance of the petitioner in the present case as well as in the case of A Narayanmoorthy (supra), was that the learned Court instead of deciding the case on merits, chose to dismiss the revision petition on the ground of delay.

In view of the peculiar facts and circumstances of the case as also the decision of Hon'ble Madras High Court in similar set of facts, the present petition is allowed. The impugned order dated 22.11.2021 is set aside. Consequently the delay of 54/55 days in filing the criminal revision is condoned. The learned Additional Sessions Judge is directed to restore the revision petition to its original number and to dispose of the same on merits, in accordance with law.

24.08.2022

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(AMAN CHAUDHARY)
JUDGE

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No