

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

CRM-M-1348-2015

Judgment reserved on: 14.03.2022

Judgment pronounced on: 08.04.2022

PIARA SINGH

... Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Argued by: Mr. Piyush Sharma, Advocate for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

VINOD S. BHARDWAJ. J.

1. The instant petition invokes the jurisdiction under Section 482 Cr.P.C. for quashing of the order dated 12.11.2014 passed by the Additional & Sessions Judge, Ferozepur in Criminal Miscellaneous Appeal No. 63 of 09.03.2012 condoning the delay in filing the Appeal against the judgment of Acquittal dated 06.01.2009, with a further prayer that the restoration of the Appeal without setting aside its earlier order dated 08.02.2012 of dismissal of the appeal for non-prosecution was wrong, illegal and un-sustainable in the eyes of law.

2. Since the controversy involved in the case is legal, the facts leading to the institution of proceedings are not crucial. It is, however, pointed out that the petitioner-Piara Singh was prosecuted in case FIR No. 90 dated 18.11.1999 for offences under Sections 419, 420, 468, 471/120-B

of the IPC registered at Police Station Cantt., Ferozepur on the allegations that the petitioner had dishonestly cheated the Office of Senior Superintendent of Police, Ferozepur by taking appointment letter on the basis of a fictitious Matriculation Certificate.

3. The petitioner was acquitted from the charges framed against him by the Chief Judicial Magistrate, Ferozepur vide judgment dated 06.01.2009 after noticing that the Matriculation Certificate Ex.PW4/A related to Piara Singh son of Jagtar Singh whereas, the petitioner is Piara Singh son of Jagga Singh and that the prosecution case suffered from material infirmities rendering it doubtful, without any subsistence or force.

4. The aforesaid judgment of the Chief Judicial Magistrate, Ferozepur was challenged by means of filing Criminal Revision No. 2383 of 2009 by the complainant-Mukhtiar Singh son of Ranga Singh. The said Revision Petition was dismissed as withdrawn vide order dated 04.08.2010 to enable the petitioner therein i.e. the complainant to file an appeal before the Court of Sessions. Accordingly, an appeal was filed by the respondent-complainant Mukhtiar Singh before the Court of Sessions Judge, Ferozepur.

5. It is evident from the perusal of the order sheets that have been appended as Annexure P-5 that the appeal in question was dismissed in default vide order dated 08.02.2012. The same is reproduced hereinafter below:-

*“Present: None for the appellant.
Appeal against the respondent No.1
already dismissed.
Addl.P.P. for respondent No.2
Case has been called several times
since morning but neither the appellant in person
nor his counsel nor anyone has appeared on behalf*

of appellant. Let the case be again called after lunch Sessions.

Dated: 08.02.2012 SD/- (Manju Rana)
Addl. S.J./Ferozepur

Present: None for the appellant.
Appeal against the respondent No.1
already dismissed.
Addl.P.P. for respondent No.2

Case has been called after lunch Sessions but again neither the appellant, nor his counsel nor anyone has appeared on behalf of appellant. Now it is already 3.45 p.m. It seems that appellant is not interested to proceed with the present appeal. Hence, the appeal stands dismissed in default. File be consigned to the record room, Ferozepur.

Announced SD/- (Manju Rana)
Dated: 08.02.2012 Addl. S.J./Ferozepur”

6. It is also evident that vide order dated 14.09.2011, the application of the respondent for seeking condonation of delay was dismissed for want of MF and the appeal was also dismissed being time barred. The impugned order passed by the Additional Sessions Judge, Ferozepur dated 12.11.2014 condoned the delay and directed the appeal to be registered in the appropriate register with new CIS Number. However, no reference to the order dated 08.02.2012, whereby the appeal had already been dismissed in default, was made. Hence, an appeal that had already been dismissed was revived and restored without any substantive order to the said

effect.

7. Learned counsel appearing on behalf of the State could not dispute the said fact as averred in the petition as well as the contention that the appeal in question already stood dismissed in default vide order dated 08.02.2012 and that the said order was never re-called or set aside by a competent Court. The specific grounds/facts stated in the petition are extracted here-in-after below:-

*“That in pursuance to the notice issued in the above mentioned application under Section 5 of the Limitation Act the petitioner was represented by his counsel and filed reply to the said application. Subsequently the above said appeal was dismissed, without condoning the delay in filing the appeal, for non prosecution vide order dated 08.02.2012. A copy of the order dated 08.02.2012 is being appended as **Annexure P-5.***

That the perusal of the order dated 08.02.2012 makes it luminous that the appeal against the petitioner was already dismissed by Ms. Manju Rana, the then Additional Sessions Judge, Ferozepur. Thus the impugned order dated 12.11.2014 is redundant, otiose and nugatory. The impugned order is liable to be set aside.

That further perusal of the impugned order discloses that the delay was straight way condoned without passing any order on the application for restoration of the appeal which was dismissed for non prosecution vide order dated 08.02.2012. Therefore the order passed by the learned Appellate Court is non-speaking and not sustainable in the eyes of law as the order dated 08.02.2012 is still operative.

8. There has been no denial of the said pleading even though the miscellaneous petition was filed in the year 2015 and service in the case was completed as on 24.03.2015. An Advocate had duly appeared for respondent

No.2-complainant. It is, however, evident from a perusal of the order sheets that the said counsel appeared till 28.01.2016 but chose not to appear on 04.05.2016, 09.05.2016, 18.07.2016, 28.08.2017, 19.12.2017, 30.04.2018, 09.10.2018, 13.02.2019 as well as on 31.10.2019.

9. There was no representation on behalf of respondent No.2 even, on 14.03.2022 and as such, the matter was decided after hearing the counsel for the State at length.

10. In view of the uncontroverted position of fact as regards the order dated 08.02.2012, it is evident that the impugned order dated 12.11.2014 was passed by the Additional Sessions Judge, Ferozepur without taking note of the earlier order dismissing the appeal itself. There was thus no occasion to re-assign an appeal number to the case without first restoring the appeal. Hence, the instant petition is allowed and the order dated 12.11.2014 allowing the application under Section 5 of the Limitation Act, is liable to be set aside. The same would however not operate as a bar against respondent No.2 to take recourse to the appropriate proceedings available to him in accordance with law against the order dated 08.02.2012, whereby the appeal had been dismissed in default.

Petition is accordingly allowed.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 08, 2022

Vishal Sharma

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