

216

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-821-2019 (O&M)
DECIDED ON: 09.09.2022

STATE OF UNION TERRITORY,
CHANDIGARH

.....APPELLANT

VERSUS

AFSHAR @ MIYA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Udit Jain, Advocate and
Mr. Kuldeep Tiwari, Advocate
for the appellant.

SANDEEP MOUDGIL, J.

CRM-9357-2019

Prayer in this application is for condonation of delay of 99 days
in filing the appeal.

For the reasons mentioned in the application, which is
supported by an affidavit, the same is allowed and the delay of 99 days in
filing the appeal is condoned.

CRA-S-821-2019

1. The present appeal for enhancement of sentence has been preferred by
the State of U.T., Chandigarh against the judgment of conviction and order
of sentence dated 13.09.2018, passed by learned Judge, Special Court,
Chandigarh, whereby the accused-respondent has been convicted for an
offence under Section 20 of the NDPS Act and sentenced to undergo

rigorous imprisonment for a period of one and half month and also to pay

fine of Rs.3000/- and in default of time, to further undergo Rigorous Imprisonment for 15 days.

2. On having a glance to prosecution story, facts would culminate as on 15.03.2017, ASI Surjit Singh along with HC Balwan and C Satyapal were patrolling in connection with prevention of crime and were going on foot towards Old Ropar road via Smadhi Gate. When they reached near Bachan Dhaba at about 5:30 p.m., one Hindu gentleman carrying a white coloured polythene bag in his right hand, was noticed coming on foot from the side of bus stand, who on seeing the police party suddenly took a turn and tried to throw the polythene bag. On suspicion, the said person was apprehended and the polythene bag was taken into possession from his right hand, which upon checking found to be containing *charas*. The said person disclosed his name to be Afshar Miya, s/o Mohammad Idrish, aged 21 years, r/o H.No.212, Near Punjabi Dhaba, Old Ropar Road, Manimajra, Chandigarh. The recovered contraband was taken out of the polythene bag and was then weighed on electronic weighing scale machine and it came out to be 150 grams of charas and the accused could not produce any licence or permit to possess the same. It tried to join the independent witness but no one came forward. Test memo form was prepared. The recovered charas was put in the same polythene in which it was recovered. It was put in a plastic container and then converted into white cloth parcel, which was sealed with seal of RK at two places. Sample seal was separately prepared and was handed over to HC Balwan Singh. The case property was taken into police possession vide recovery memo. Ruqa was sent to the police station through C Satyapal, on the basis of which FIR was registered. Thereafter, further investigation was ensued and on completion of investigation, challan was presented before the court.

3. Copy of challan was supplied to the accused. On being charged under Section 20 of the NDPS, he pleaded not guilty and claimed trial.

4. The prosecution has examined the following witnesses:-

PW-1- HC Balwan Singh

PW-2- HC Sakkatar Singh, MMHC

PW-3- C Mandeep Singh

PW-4- HC Yashpal, Draftsman

PW-5- Inspector Inder Singh

PW-6- SI Rohit Kumar

PW-7- ASI Surjit Singh

Thereafter, tendered the report of CFSL Ex.P-13 and closed the prosecution evidence.

5. The incriminating evidence coming on record from testimonies of the prosecution evidence, which was put to the accused-respondent during the course of statement under Section 313 Cr.P.C., to which the accused-respondent denied and pleaded false implication and innocence.

6. Learned Court below has convicted the accused and sentenced him to undergo rigorous imprisonment for a period of one and half month and also to pay fine of Rs.3000/- and in default of time, to further undergo Rigorous Imprisonment for 15 days.

7. The State of UT, Chandigarh has preferred the present appeal seeking enhancement of the sentence of the accused-respondent to the maximum i.e., upto 10 years and with fine, which may extend to Rs.1 lakh, as prescribed under Section 20 of the NDPS Act.

8. It is contended by the learned counsel for the State that though the learned trial Court has rightly found that the recovery of contraband and the allegations against the accused-respondent stands proved beyond any reasonable doubt but the sentence awarded is inadequate and ought to have been as 10 years with fine of Rs.1 lakh, as prescribed under Section 20 of the

the accused-respondent without any licence or permit. The prosecution witnesses have successfully corroborated the prosecution case, which is apparent on record that the prosecution has been successful in getting the accused-respondent convicted. Therefore, the sentence awarded by the Court below is not in accordance with the provision and the term as set out under the provisions of Section 20 of the NDPS Act accordingly, the sentence of the accused-respondent is liable to be enhanced to the maximum.

9. I have heard the learned counsel for the State and also gone through the record of the case.

10. On consideration of the impugned judgment passed by the learned Court below and the submissions raised by the learned counsel for the appellant-U.T., Chandigarh, this Court is of the considered view that the judgment passed by the learned Court below does not have any illegality or infirmity as far as the sentence awarded by the learned Court below to the respondent-accused is concerned. The commercial quantity is 1 kg or more of *charas* and as such there is a huge difference of weight between 150 grams and 1 kg. Further, it is a chance recovery because there is no prior secret information in the present case.

11. Even otherwise, the appeal has been filed after delay of 99 days without any plausible explanation.

12. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide: Madanlal v. Shyamlal, AIR 2002 SC 100; and Ram Nath

Sao @ Ram Nath Sahu & Ors. v. Gobardhan Sao & Ors., AIR 2002 SC

13. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

14. The Statute of Limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale.

According to Halsbury's Laws of England, Vol. 24, p. 181:

"330. Policy of Limitation Acts. The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence".

An unlimited limitation would lead to a sense of insecurity and uncertainty, and the therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence' or laches.

15. In P. Ramachandra Rao v. State of Karnataka, AIR 2002 SC 1856, this Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in A. R. Antulay v. R.S. Nayak, AIR 1992 SC 1701.

16. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the certain parameters.

17. In my view the reasons/grounds for condonation of delay as mentioned in the application has not specifically been explained. The administration/U.T., Chandigarh was well aware about the period of limitation but did not bother to know the whereabouts and the stagewise movement of the same. It has become a matter of routine even for the State not to file appeal within the stipulated period and defence taken is of procedural delay in obtaining approval/opinion. In fact the State specifically is expected to expedite the matter in case they want to prefer appeal against the judgment of conviction for enhancement. The procedural delay as claimed by the State/prosecution cannot be a ground to condone the delay. If any delay is caused, the person responsible for the same is to be ascertained and departmental action is required to be taken against him. This Court is of the firm opinion that only under the exceptional circumstances, the delay, if

delay of each and every day is properly explained and supported by documentary evidence.

18. The counsel for the appellant has failed to advance any convincing argument in the application for condonation of delay to explain and as such, the procedural delay as claimed by the prosecution cannot be a ground to condone the same. I would rather go further to say that if a delay is caused at the hands of State/prosecution, the official responsible for the same is to be ascertained and departmental action is required to be taken against him.

19. Accordingly, in the instant case, neither any sufficient cause and explanation is coming forth nor any bona fide act has been demonstrated in the application. It is apparent from the another aspect that as per the office report that the respondent is not residing at the given address, which was provided by the appellant-State, however, no steps have been taken to get the service effected upon the accused-respondent by furnishing correct address. Therefore, the present appeal is liable to be dismissed on the ground of delay as well apart from the main appeal being devoid of any merits.

20. In the light of discussion made hereinabove, the present appeal is dismissed in the aforesaid terms.

(SANDEEP MOUDGIL)
JUDGE

09.09.2022
poonam negi

Whether speaking/reasoned: *Yes/No*
Whether reportable: *Yes/No*