

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

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CRM-28832-2021 & CRM-A-158-2021

DATE OF DECISION: JULY 12, 2022

State of Haryana

.....Applicant

VERSUS

Krishan Lal @ Kala and another

....Respondents

**CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR.JUSTICE SANDEEP MOUDGIL**

**Present: Ms. Tanisha Peshawaria, DAG, Haryana,
for the applicant-State.**

AUGUSTINE GEORGE MASIH, J.

CRM-28832-2021 has been filed under Section 5 of the Limitation Act, 1963 read with Section 482 Cr.P.C. by the applicant praying for condonation of delay of 276 days in filing the leave to appeal.

The delay, which is being sought to be explained, is only relatable to the time spent in the movement of the file from one office to another. It is not even detailed as to on which date the file was received in the respective offices and how they dealt with the same. It has also not been mentioned that what decision was taken at the various stages, leading to filing of an appeal. In the absence of details with regard to the processing of the file, it cannot be said that the time spent for taking the decision for filing an appeal, preparing the same and ultimately filing it, has been duly explained, especially when there is an inordinate delay of 276 days in filing the appeal. The delay having not been explained satisfactorily, the application deserves to be dismissed and as a consequence thereof, the application under Section 378 (3) of the Code of Criminal Procedure for

grant of leave to appeal also deserves dismissal on the ground of delay and laches.

However, at the insistance of learned Deputy Advocate General, Haryana, we have gone through the impugned judgment dated 29.03.2019 passed by the Additional Sessions Judge, Ambala, whereby both the respondents have been acquitted in FIR No.326, dated 27.09.2016, under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, “the 1985 Act”), registered at Police Station, Baldev Nagar as the prosecution has failed to prove its case.

Briefly, the facts are that on 27.09.2016 at about 02.30 P.M., the police party was present on Sultanpur Road, near Motor Market, Ambala City on patrolling duty. A person holding a white plastic bag was seen coming to the Motor Market side. On seeing the police party, he turned back but was apprehended on suspicion. The said person disclosed his name as Krishan Lal @ Kala. The bag possessed by him was checked, which contained poppy straw. On weighing, it was found to be 5 Kgs. including the bag. The samples were prepared and the parcels were sealed with three seals each of VK. The accused was arrested from the spot. It is on his disclosure statement that he had purchased this 5 Kgs. of poppy husk from one Randhir Singh son of Prem Singh. the said person was also arrested in this case, who was already in custody in some other FIR. However, no recovery has been effected from him.

After the presentation of challan, charges were framed against the respondents under Section 15 of the 1985 Act against Krishan Lal @ Kala and under Section 29 of the 1985 Act against Randhir Singh, respondent No.2. Twelve witnesses were examined by the prosecution. The

trial Court, after considering the evidence, which has been produced by the prosecution, has come to the conclusion that the provisions of Sections 50 and 52 of the 1985 Act have not been complied with. It has further been found that there are material discrepancies in the statements of the prosecution witnesses and, therefore, there is a possibility of plantation of poppy husk on respondent No.1. The delay in deposit of the case property has also been pointed out as it has been found that the recovery was effected on 27.09.2016 whereas the case property has been handed over on 30.09.2016. This was with regard to Krishan Lal @ Kala-respondent No.1.

As regards respondent No.2, the allegations against him is that he had sold 5 Kgs. of contraband i.e. Poppy straw to co-accused Krishan Lal @ Kala, respondent No.1. Nothing is alleged to have been recovered from him except for the disclosure statement of the co-accused. In the absence of any recovery being effected in pursuance of the disclosure statement/confession of the said accused, it cannot be said that the case has been proved against him. No evidence has come on record, which would prima-facie show that Randhir Singh had entered into criminal conspiracy or that he has abetted co-accused Krishan Lal @ Kala to commit offence punishable under the 1985 Act. All these grounds have led to the conclusion that the prosecution has failed to prove the case against the respondents.

Counsel for the State has made an effort to explain that the recovery, which had been effected from respondent No.1, Krishan Lal @ Kala, is a chance recovery and, therefore, Section 50 of the 1985 Act would not be applicable.

This contention of learned counsel for the State cannot be accepted as nothing has come on record in this regard as to whether it was a

chance recovery. Further, the aspect with regard to non-inclusion/association of the independent witness with regard to search and the recovery and that too at 03.20 P.M. in the Motor Market, which is a very busy area, itself caste doubt upon the story of the prosecution, especially when the prosecution witnesses have categorically admitted that no independent witness was associated in the search, seizure and even thereafter at the time of preparation of the samples, affixing of the seals etc. It would not be out of way to mention here that even the signatures of the accused have not been taken on the samples. The recovery memo also does not bear his signatures. The factum with regard to having given notice under Section 50 of the 1985 Act has also not been established and rather on cross-examination, the prosecution witnesses are unable to explain the said aspect. Glaring discrepancies with regard to the time of recovery, recording of statements etc. have also been adversely commented upon by the trial Court on the basis of the evidence, which has been found to be correct on the basis of the records. In these facts and circumstances of the case, we do not find it a fit case where even on merits a case is made out for granting leave to appeal.

In view of the above, the present application under Section 378 (3) of Cr.P.C. for grant of leave to appeal is dismissed on the ground of delay and laches as also on merits.

(AUGUSTINE GEORGE MASIH)

JUDGE

July 12, 2022
khurmi

(SANDEEP MOUDGIL)
JUDGE

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