

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

**CRM-40110-2013 IN
CRM-A-743-MA-2013**

**Reserved on : 14.11.2023
Pronounced on : 16.12.2023**

Parvesh Rani

...Petitioner

Versus

Amrit Rai and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Rakesh Bakshi, Advocate
for the applicant-appellant.

Mr. Anshul Mangla, Advocate
for respondent Nos. 1 to 3.

MANISHA BATRA, J.

1. This order disposes of the present application filed under Sections 5 and 14 of the Limitation Act by the applicant-appellant for condoning the delay of 1298 days in filing the appeal against the judgment of acquittal dated 14.12.2009, passed by the Court of learned Judicial Magistrate First Class, Yamuna Nagar at Jagadhri in Criminal Complaint No. 570-1 of 2009, tilted as ***Parvesh Rani vs. Amrit Rai and others***, whereby, the respondents were acquitted of charges as framed against them and the compliant filed by the applicant-appellant was dismissed.

2. The applicant has prayed for condoning the delay of 1298 days in filing of the appeal by submitting that inadvertently, he had filed a revision petition before the Sessions Court, Yamuna Nagar at Jagadhri challenging the judgment of acquittal dated 14.12.2009. On realising that the revision against the judgment of acquittal was not maintainable, he had

withdrawn the same on 01.08.2011 and had filed appeal before this Court on 29.09.2011. It is submitted that due to some objections, the file of the appeal was returned by the concerned Branch of this Court on 04.10.2011. The Clerk of the counsel, who had prepared the appeal, kept the file in the bunch of admitted cases due to inadvertence and, therefore, the appeal could not be filed within time. It is submitted that the delay in filing the appeal is unintentional and bona fide and without any fault on the part of the applicant-appellant. While submitting that there are sufficient grounds to condone the delay and the same is required to deliver substantial justice, the applicant has prayed for allowing the application.

3. Upon notice, reply had been filed on behalf of respondent Nos. 1 to 3. Learned counsel for respondent Nos. 1 to 3 argued that the present application, seeking leave to appeal, is barred by limitation as the same had been filed after inordinate delay. He further argued that the reasons assigned by the applicant for delay were not worth acceptance. He urged that the application was liable to be dismissed solely on the ground of delay. In support of his argument, he relied upon ***Rulda Ram vs. State of Haryana, 2012 (27) RCR (Criminal) 204*** and ***Ajit Singh Thakur Singh and another vs. State of Gujarat, 1981 CLR 287***.

4. Learned counsel for the applicant-appellant and learned counsel for the respondents were heard at considerable length and the the record of the case was persused.

5. It is revealed from the record that the complaint filed by the present applicant had been dismissed by the Court of JMIC, Yamuna Nagar on 14.12.2009. The applicant had filed a revision before the Sessions Court, Yamuna Nagar challenging the said judgment of acquittal. Annexure P-1 is

the copy of order dated 01.08.2011 showing that as on that date, the revision petition, filed by the applicant, was ordered to be treated as an appeal, however, the same had been dismissed as withdrawn on a statement made by the counsel for the applicant to the effect that the applicant would pursue his remedy available before the appropriate Court. It is further revealed that the applicant had initially filed the appeal before this Court on 29.09.2011. However, some objections are shown to have been raised by the Registry on 04.10.2011 and these objections are shown to have been removed on 14.03.2013 i.e. after a gap of 02 years, 01 month and 10 days. The explanation rendered by the applicant is not satisfactory. The time spent by the applicant in prosecuting the revision before the Sessions Court was under a *bona fide* impression that the revision petition is maintainable. There was no intent to cause delay in proceedings. The applicant was prosecuting the revision with *bona fide* faith in a Court without jurisdiction. Having realized his mistake, he sought leave to withdraw the revision with liberty to approach the jurisdictional Court. His act and conduct shows that he has been *bona fide* prosecuting the revision petition in good faith. Under these circumstances, while applying Section 14 of the Limitation Act, the time spent by the applicant in prosecuting revision petition before the Sessions Court, is required to be excluded while calculating the period of limitation.

6. Now the question that arises before this Court is as to whether even after excluding the said period from 14.12.2009 to 01.08.2011, the appeal filed by applicant before this Court would be within limitation or not as after filing the present appeal before this Court and on having been raised some objections by the Registry, the applicant-appellant took a long period

of more than two years to do the needful.

7. The law of limitation is founded on the public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that their legal remedy must be kept alive for a period fixed by the legislature. To put up it differently, the law of limitation prescribes a period within which legal right can be filed for redress of the legal injury. At the same time, the Courts are bestowed with the power to condone the delay if sufficient cause is shown for not availing the remedy within the stipulated time. It is to be seen as to whether the applicant has offered any plausible/tangible explanation for the delay of 1258 days for filing of the appeal or not.

8. Section 378(5) of Cr.P.C. provides that no application under Sub-Section 4 for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant and sixty days in every other case, computed from the date of that order of acquittal. It being so the applicant was required to file application for grant of special leave to appeal within 60 days of the order passed by the trial Court. However, the same has not been done and there is a delay of more than two years, even if the period for which the applicant was inadvertently pursuing his remedy before the Sessions Court by way of filing a revision is excluded. The explanation rendered for delay is least convincing and no ground is made out for condonation of delay in filing the application. Section 3 of the Limitation Act, 1963 deals with bar of limitation providing that every suit instituted, appeal and application made after the prescribed period shall be dismissed,

although limitation has not been set up as a defence. In a recent judgment rendered in *State of Uttar Pradesh and others vs. M/s Satish Chand Shivhare and Brothers, 2022 (2) Apex Court Judgments (SC) 531*, Hon'ble Supreme Court has held that once an appeal is found to be barred by limitation, there can be no question of any obligation of the Court to consider the merits of the case of the appellant. Hon'ble Apex Court in *P. K. Ramachandran v. State of Kerala and another, 1997 (4) RCR (Civil) 242*, vide which, while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay was given, held as under:

“Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds.”

9. In *Balwant Singh (dead) v. Jagdish Singh and others, 2010(8) SCC 685*, Hon'ble Supreme Court held as under:

“13. As held by this Court in the case of Mithailal Dalsangar Singh (supra), the abatement results in the denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be construed liberally. We may state that even if the term 'sufficient cause' has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the concerned party. The purpose of introducing liberal construction normally is to introduce the concept of 'reasonableness' as it is understood in its general connotation. The law of

limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.”

10. Hon'ble Supreme Court in ***Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and another, 2010 (5) SCC, 459*** held as under :-

“8. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury.

11. Reference can also be made to ***Amalendu Kumar Bera and others Versus The State of West Bengal 2013 (2) RCR (Civil) 534***, the

Supreme Court held that the delay in filing the appeal or revision cannot be mechanically condoned, in the absence of 'sufficient cause' for delay.

12. In ***Rulda Ram's*** case (supra), an application for condoning the delay of 78 days in filing the leave to appeal was dismissed by Court in the absence of any satisfactory explanation. In ***Ajit Singh Thakur Singh's*** case (supra), Hon'ble Supreme Court had observed that an applicant who allows limitation to expire and pleads sufficient cause for not filing the appeal earlier must establish that because of some event or circumstance arising before limitation expired, it was not possible for him to file the appeal within time and any circumstance arising after the expiry of limitation cannot constitute such sufficient cause. On applying the above discussed position of law to the peculiar facts and circumstances of the present case, I am of the considered opinion that the explanation given by the applicant for delay in filing the appeal after withdrawal of the revision pending before the Sessions Court is not at all plausible and satisfactory and is not worth acceptance. Undoubtedly, the appeal before this Court was initially filed on 29.09.2011. It was returned back on 04.10.2011 with certain objections by the Registry and was refiled only on 26.03.2013 as the objections were not removed till that date. The explanation as given by the applicant that the file was kept by the clerk of his counsel in the files of admitted cases cannot be considered to be a plausible explanation. No such event or circumstance, which had arisen after withdrawal of the revision from the Sessions Court, has been cited, which could constitute a sufficient cause. Therefore, in the absence of any satisfactory explanation, no case is made out for condoning the delay.

13. In view of the facts and circumstances and also in view of the

ratio of law as laid down in the aforesaid judgments, the present application is dismissed. Consequently, the application seeking leave to appeal is also dismissed.

16.12.2023
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>