

106

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM Nos.12428 to 12431 of 2023 in/and
CRR-700-2023 (O&M)
Date of Decision: March 17, 2023

Kapil Kumar

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Manav Bajaj, Advocate
for the petitioner.

.....

RAJESH BHARDWAJ, J.(ORAL)

CRM-12428-2023

For the reasons mentioned in the application, the same is
allowed. Annexures A-1 to A-6 are taken on record.

CRM-12429-2023

Instant application has been filed for condonation of delay of
275 days in filing the revision petition.

It has been contended by counsel for the applicant/petitioner
that the applicant/petitioner had duly filed the appeal against the conviction
and sentence orders dated 19.11.2019 and 25.11.2019. He submits that
appeal was dismissed for non-prosecution as father of the
applicant/petitioner fell ill and on account of the same he remained unaware
about the proceedings. He submits that in the process there occurred a delay
of 275 days in filing the present revision petition. He submits that delay
occurred is bona fide and unintentional and if the same is not condoned, the

applicant/petitioner would suffer an irreparable loss and injury. It is also submitted that now the parties have duly compromised the matter.

After hearing counsel for the applicant/petitioner and perusing the file, this Court finds that the delay occurred deserves to be condoned. Resultantly, the application is allowed and delay of 275 days in filing the revision petition is condoned.

CRR-700-2023

Instant revision petition has been filed challenging the orders dated 19.11.2019 and 25.11.2019 passed by learned Judicial Magistrate, First Class, Ellenabad whereby the applicant/petitioner was convicted for offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for a period of one year. Besides this, he has also impugned order dated 11.03.2022, passed by Sessions Judge, Sirsa wherein the appeal filed by the petitioner against orders dated 19.11.2019 and 25.11.2019 was dismissed for non-prosecution. He is also aggrieved by the order dated 02.03.2023 vide which his application for recalling the order dated 11.03.2022 and restoration of the main appeal has also been dismissed being not maintainable by learned Sessions Court, Sirsa.

Counsel for the petitioner fairly submits that he restricts his prayer in this petition qua impugned order dated 11.03.2022 whereby appeal of the petitioner was dismissed for non-prosecution and order dated 02.03.2023 vide which application filed for recalling of the order dated 11.03.2022 was dismissed as not maintainable.

It has been contended by counsel for the petitioner that after filing of the appeal both the sides have amicably resolved their issues and

whole amount in dispute has already been repaid to the complainant/Bank. He submits that the appeal was dismissed for non-prosecution and was never decided on merits. He also submits that the petitioner filed an application for recalling the same but the learned Appellate Court dismissed the same by holding that the same is not maintainable. The appellate Court has held that after dismissal of appeal, the appellate Court has become *functus officio* and thus could not recall the order vide which appeal was dismissed for non-prosecution vide order dated 11.03.2022.

Heard.

After hearing counsel for the petitioner, it is clear that this petition survives only for quashing of impugned orders dated 11.03.2022 and 02.03.2023. It is apparent from the arguments raised and perusing the record that the petitioner had filed the appeal before the Appellate Court challenging his conviction and sentence as ordered by learned trial Court vide orders dated 19.11.2019 and 25.11.2019. The appeal was not heard on merits and the same was dismissed for non-prosecution. The application filed for recalling the appeal was also declined holding it to be non-maintainable. This Court is of the opinion that the petitioner had a substantial right to file the appeal against his conviction and sentence. It is also apparent from the record that the parties have now settled the dispute amicably and the amount in dispute has also been paid by the petitioner.

Resultantly, it is held that the appeal filed by the petitioner deserves to be decided on merits by the appellate Court. As a result, both the impugned orders, i.e. 11.03.2022 and 02.03.2023 are set aside.

Appellate Court is directed to restore the appeal to its original number and

decide the same on merits expeditiously after issuing notice to the other side,

in accordance with law.

Petitioner is at liberty to raise all his grievances before the

appellate Court, in accordance with law.

March 17, 2023
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(RAJESH BHARDWAJ)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |