

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

CRR-938-2023 (O&M)
Date of decision: 24.04.2023

Kiranpal

....Petitioner

Versus

State of Punjab and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Arjunveer Sharma, Advocate for the petitioner

Mr. H.S. Sullar, Sr. DAG Punjab

Mr. Karan Dhawan, Advocate for respondent No.2

AMAN CHAUDHARY. J.

1. Present revision petition has been filed against the judgment and order dated 19.12.2022 passed by the learned Judicial Magistrate First Class, Ludhiana in complaint under Section 138 of the Negotiable Instruments Act, 1881 and order dated 23.03.2023 passed by learned Additional Sessions Judge, Ludhiana vide which the appeal filed by the petitioner had been dismissed holding it to be barred by limitation.

2. Briefly put, the facts of the case are that the complainant-respondent loaned a sum of Rs.2,35,000/- to the accused-petitioner and in order to discharge the legal liability, he issued the cheque, which on presentation was dishonoured. A legal notice dated 22.03.2018 was issued to the accused-petitioner. Thereafter, a complaint under Section 138 of NI Act was filed against the petitioner, in which notice of accusation was served to him, to which he pleaded not guilty and

claimed trial.

3. On evaluating the evidence produced by the parties, vide judgment/order dated 19.12.2022, the trial Court convicted the petitioner under Section 138 of NI Act and sentenced him to undergo RI for a period of one year. He was also sentenced to pay compensation equivalent to the cheque amount i.e. Rs.2,35,000/- to the complainant-respondent.

4. The accused-petitioner challenged the same before the Appellate Court, however, the same was dismissed vide order dated 23.03.2023, it being barred by limitation.

5. Learned counsel for the petitioner submitted that the Appellate Court has committed a grave error while dismissing the appeal of the petitioner only on the ground of delay. Since, the copy of the judgment to be supplied free of cost, was not received by the petitioner, it having not been prepared, he on the same day i.e. 19.12.2022 filed an application seeking a certified copy thereof. The same was prepared on 27.02.2023. Thereafter, he instituted the appeal on 17.03.2023, within the permissible period of 30 days. However, the same was dismissed without taking into consideration the aforesaid facts and excluding the period of preparation of the certified copy.

6. On the other hand, learned counsel for the State assisted by learned counsel for respondent No.2 submitted that the Appellate Court has rightly dismissed the appeal being time barred.

7. Heard.

8. It is apposite to make a reference to the order passed by learned Appellate Court, which reads thus:

“Today, Sh. N.S. Rana Advocate filed power of attorney on behalf of the respondent Gurdial Singh. 2. In the present case, complaint u/s 138 of Negotiable Instrument Act has been filed by Gurdial Singh against Kiran Pal. After preliminary evidence lead by complainant, accused was ordered to be summoned u/s 138 of Negotiable Instrument Act vide order dated 13.07.2018, by the Court of Ld. JMIC, Ludhiana. Thereafter, the accused was admitted on bail and notice of accusation was served upon the accused. Then in after charge evidence complainant appeared as CW.1 and closed his evidence. After closure of evidence statement of accused u/s 313 Cr.P.C. was recorded. Thereafter the accused/appellant was convicted and sentenced vide judgment dated 19.12.2022 passed by the Court of Ms. Prabha Prashar, JMIC, Ludhiana. 3. The present appeal is filed against judgment and order of conviction dated 19.12.2022, on 17.03.2023 and the same was entrusted to this Court on 18.03.2023. On the said date, appellant was not present. Today, appellant appeared with counsel. Along with appeal, an application u/s 389 of Cr.P.C. is filed, but there is no application filed by appellant for condonation of delay. The judgment of conviction is pertaining to 19.12.2022 and copy of judgment was to be supplied to the accused on the same day by the Trial Court, but instead of taking said copy free of cost from the Court, copy of judgment is applied, which was prepared on 27.02.2013, but it cannot be a ground to condone the delay, when no such prayer is made to file separate application for condonation of delay. The appeal is not filed within period of limitation. The accused/appellant appeared before the Court. So, beyond period of limitation, the appeal cannot be entertained and same is dismissed being barred by limitation. Appellant is ordered to be taken into custody. Copy of this order be sent to Trial Court immediately along with convict/appellant to send him behind the bars and to undergo the sentence passed by the same. Copy of this

order be given dasti to appellant free of cost, if so required. File be consigned to record room.”

9. Reference is required to be made to Section 12 of the Limitation Act:
- “12. Exclusion of time in legal proceedings.—**
- (1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.
- (2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.
- (3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment 1[***] shall also be excluded.
- (4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.
- Explanation.—In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.”
10. Adverting to the facts of the present case, a perusal of the certified copy of the judgment of the trial Court would clearly reveal that the same was applied on the day of pronouncement of the judgment i.e. 19.12.2022. However, it was prepared on 27.02.2023, whereafter the appeal was filed within the permissible period of 30 days on 17.03.2023. As is discernible from the impugned order dismissing the appeal on the ground of delay, the Additional Sessions Judge has not taken into consideration that as per Section 12 of the Limitation Act, the period consumed in preparing the certified copy of the judgment was required to

be excluded while computing the period of limitation, thus, on account the aforesaid error, the appeal was held to be barred by limitation.

11. There is nothing in the order to suggest that any objection was raised by the judicial branch of the Court, while scrutinizing the appeal before its listing, raising any objection of it having not been filed within the period of limitation.

12. Pertinently, the impugned order records that the certified copy of the judgment was to be supplied free of cost to the petitioner on the same day but instead of taking the same, he filed an application for obtaining certified copy thereof. The learned counsel for the petitioner while drawing the attention of this Court to para 9 of the petition, stated that on the same very day i.e. 19.12.2022, when the judgment was pronounced, the copy of the judgment to be provided free of cost was not so done, for the reason that it was not ready on the said date. This being the situation, it was thus incumbent upon the Court to have delved into the issue to ascertain the correct factual position as it existed. It does not seem to be plausible for the petitioner, who was in custody, to have not accepted the copy of the judgment, mandatorily to be supplied to him free of cost and instead himself cause delay in filing of appeal. Noticeable is the fact that the certified copy of the judgment was applied on the same day of its pronouncement i.e. 19.12.2022, however, it is apparent from the certified copy placed on record of this case that it was prepared on 27.02.2023. If the fact recorded by the Court is accepted, then the certified copy of the judgment would have perhaps been supplied to the petitioner on that very day itself and more than two months may not have been taken for its preparation, the reasons thereof were also not ascertained. Thus, the order dismissing the appeal of the petitioner is flawed, for reasons more than one.

13. As is manifestly clear, had the period of preparation of the certified copy been excluded, the appeal filed by the petitioner was within time. However, even when the Additional Sessions Judge was of the view that there was a delay, an opportunity should have been afforded to the petitioner to seek its condonation by filing an application, instead of outrightly dismissing the appeal thereby defeating his substantive right, as was also held in a case, wherein though the appeal was filed within time, however, at the time of hearing the Additional Sessions Judge pointed out thereto be a delay of 2 days in filing the appeal, but did not allow the counsel for the applicant to file an application under Section 5 of the Limitation Act and dismissed the appeal on technical ground. The High Court while allowing the applicant to file an application under Section 5 of the Limitation Act, set aside the impugned order and remanded the matter to consider on merit the application and appeal. [See **Anil Bansal vs. State of Chhattisgarh** 2004(1) Cri. CC 479,(Chg)].

14. Courts exist for dispensation of justice and not for its denial by adopting a pedantic or hyper-technical approach. Right to file an appeal against conviction is statutory. The humanist rule that procedure should be viewed as the handmaid of justice and meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose an adjudication on merits of substantive rights. It is thus, imperative to be rational and pragmatic.

15. Hon'ble The Supreme Court in **Shilpa vs. Madhukar & others**, 2001 (1) JIC 588 (SC) observed and held that, "Having heard the learned Counsel for the appellant and on going through the impugned order of the High Court, we are of the considered opinion that in the facts and circumstances of the case, the

High Court would have done well in condoning the delay and entertaining the application of revision and disposing of the same on merits. In this view of the matter, we set aside the impugned order and remit the matter to the High Court for redisposal of the same on merits.”

16. In view of the peculiarity of facts and circumstances of this case, judgments referred to hereinabove and to secure the ends of justice, this Court finds that the petition deserves to be partly allowed.

17. Consequently, the order dated 23.03.2023 passed by learned Additional Sessions Judge, Ludhiana is hereby set aside. The appeal be restored to its original number. The Appellate Court is requested to decide the same on merits in accordance with law.

(AMAN CHAUDHARY)
JUDGE

24.04.2023
S.Sharma(syr)

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