

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-38908-2019 in/and
CRM-A-2832-2019 (O&M)

Reserved on 09.03.2023

Date of decision:24.03.2023

STATE OF HARYANA

.... Applicant-Appellant

Versus

JAGPAL SINGH AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO.
HON'BLE MRS. JUSTICE AMARJOT BHATTI.

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

M.S. RAMACHANDRA RAO, J.

CRM-38908-2019 and CRM-A-2832-2019 (O&M)

This Criminal Appeal is preferred by the State challenging the order dt.03.02.2018 passed by the learned Additional Sessions Judge, Sirsa, setting aside the conviction of respondents vide judgment dt.18.07.2014 passed by the Judicial Magistrate, First Class, Sirsa, and an application bearing No.CRM-38908-2019 has been filed under Section 5 of the Limitation Act,1963 read with Section 482 Cr.P.C. to condone the delay of 580 days in filing the Criminal Appeal.

In the application for condonation of delay, it is stated that though the impugned judgment was pronounced on 03.02.2018 by the learned Additional Sessions Judge, Sirsa, the District Magistrate, Sirsa felt that it was a case for filing a Criminal Appeal and issued a letter to the office of the Advocate General, Haryana on 29.04.2018; that the sanction was granted by

the Legal Remembrancer, Haryana, for filing the Appeal; and the Appeal was filed on 06.11.2019.

No explanation was offered in the application as to why the decision to file the Appeal taken by the District Magistrate, Sirsa and communicated to the office of the Advocate General, Haryana on 23.04.2018, was not acted upon till 05.11.2019, when the Appeal is filed. In our opinion, there is negligence on the part of the Appellant-State in taking steps for filing the Appeal within the period of limitation prescribed by law.

In Office of the Chief Post Master General Vs. Living Media India Limited¹, the Supreme Court has held no doubt some laxity is given for Government's inefficiency but with the technological advancement now the Judicial view prevalent earlier when such facilities were not available has been overtaken. It held:

“12. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be

¹ (2012) 3 SCC 563

adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

The said decision in the ***Office of the Chief Post Master General and Others*** (1 Supra) has been recently reiterated in ***The State of Odisha and Others Vs. Sunanda Mahakuda***². In para 6 of the said judgment, it is observed as under:-

2 2021(11) SCC 506

“The object of such cases appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say nothing could be done because the highest Court has dismissed the appeal. It is mere completion of formality to give a quietus to the litigation and save the skin of the officers who may be at fault by not taking action in prescribed time. If the state government feels that they have suffered losses, then it must fix responsibility on concerned officers for their inaction but that ironically never happens. These matters are preferred on a presumption as if this Court will condone the delay in every case, if the State Government is able to say something on merits.”

The aforementioned decision of the Supreme Court applies to the instant case as well, and since there appears to be gross negligence on the part of the appellant-State in taking steps to prefer the Appeal within the time prescribed by law, we do not find any merit in the application for condonation of delay in filing of the instant Criminal Appeal, it is accordingly dismissed.

Consequently, the Criminal Appeal is also dismissed.

Pending application(s), if any, shall also stand disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(AMARJOT BHATTI)
JUDGE

March 24, 2023

Ess Kay

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*