

107-2 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2726-2022(O&M)
Date of Decision:05.09.2023

Sandhuri Lal Mittal

...Petitioner

Vs.

State of Punjab and Anr.

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Jagdish Manchanda, Advocate
for the petitioner.

Mr. Mohinder Singh Joshi,AAG, Punjab.

Mr. L.S Sidhu, Advocate
for the complainant.

N.S.Shekhawat J.

CRM-47540-2022

1. The applicant/petitioner has filed the present application under Section 5 of the Limitation Act for condonation of delay of 1311 days in filing the present revision petition.

2. In fact, vide the judgment of conviction and order of sentence dated 25.09.2013, passed by the Court of Sub-Divisional Judicial Magistrate, Budladha, the present petitioner was ordered to be convicted for the offence punishable under Section 138 of the Negotiable Instruments Act and was sentenced to undergo RI for a period of two years with fine of Rs.5,000/-, along with default stipulation. The petitioner filed an appeal before the Court of Additional Sessions Judge, Mansa and vide the judgement dated 17.02.2017,the Court of Additional Sessions Judge, Mansa dismissed the appeal filed by the

present petitioner and additionally, the petitioner was directed to pay a compensation for a sum of Rs.2 lacs, in addition to the sentence and fine awarded by the trial Court. In fact, even before the Appellate Court, the petitioner did not appear and absented from the Court proceedings and finally the judgment was passed in his absence only.

3. Learned counsel for the petitioner/applicant submits that the appeal filed by the petitioner was ordered to be dismissed by the Court of Additional Sessions Judge, Mansa/Appellate Court on 17.02.2017. The mental state of petitioner/applicant was not good and he remained under treatment of a Hakim at Aurangabad (U.P) and could finally filed this petition on 02.12.2022 after a delay of 1311 days. Learned counsel further contends that the delay in filing the present revision petition was unintentional as the petitioner was under continuous treatment from a Hakim. Even he was arrested in the present case on 12.07.2022 and the revision petition was filed on 02.12.2022 i.e after five months of his arrest.

4. During the course of hearing, learned counsel for the petitioner/applicant submitted that there was a possibility of the compromise with the complainant and to show his bonafide, he handed over a sum of Rs.2.5 lacs to the complainant in the present case on 17.01.2023, thereafter, the petitioner was ordered to be released on interim bail and was directed to pay a sum of Rs.2.5 lacs in favour of the complainant on the next date of hearing and on 14.03.2023, the petitioner had handed over a sum of Rs.2.5 lacs by way of draft to the respondent in the Court. Thereafter, the matter was referred to the Mediation and Conciliation centre of this Court and the petitioner was directed to pay the remaining amount of the cheque/compensation to the respondent,

however, the petitioner did not pay the outstanding amount to the respondent/complainant. Consequently, arguments made by both the parties on the present application under Section 5 of the Limitation Act were heard by this Court.

5. Learned counsel for the respondent vehemently argued that vide the judgment and order dated 25.09.2013, the petitioner was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act and was sentenced to undergo RI for a period of two years with fine of Rs.5,000/-, along with default stipulation. Against the said order, he filed an appeal before the Court of Additional Sessions Judge, Mansa on 15.10.2013. During the pendency of the appeal, the present petitioner moved an application for exemption, which was allowed. Again on 26.05.2014, he moved an application for exemption from appearance. Thereafter, he sought repeated adjournments on one pretext or the other for more than a year. On 23.04.2015, the Appellate Court observed that no further adjournment would be granted as the appeal was quite old. However, 12.05.2015, the present petitioner/applicant did not appear without seeking any exemption in the case and the case was again adjourned on the request made by appellant on the several dates. The petitioner was successful in getting the case adjourned on one pretext or the other for nearly five months. However, on 23.11.2015, the bail granted to present petitioner/applicant were ordered to be cancelled and the warrants of arrest were issued for 03.12.2015. On 05.12.2015, the surety of the present petitioner appeared and sought an adjournment to produce him before the Appellate Court. However, on 05.01.2016, neither the present petitioner/applicant appeared nor his surety appeared before the Appellate Court. On 06.02.2016,

the surety appeared and sought an adjournment to ensure the presence of the present petitioner and the surety was directed to remain present on 09.02.2016. On 09.02.2016, a sum of Rs.30,000/- was imposed as penalty on the surety under Section 446 Cr.P.C and warrant of arrest were issued for the presence of the present petitioner/applicant, however, the present petitioner/applicant did not appear on 11.03.2016, 18.04.2016, 10.05.2016 and 14.07.2016 and warrants of arrest were received back unexecuted. The appeal filed by the petitioner was again taken up on 14.07.2016, 06.08.2016, 03.09.2016, 20.09.2016, 05.10.2016, 24.10.2016 and 10.11.2016, but the petitioner did not appear before the Appellate Court. On 10.11.2016, 28.11.2016, 03.12.2016 and 14.12.2016 the petitioner moved applications for exemption from personal appearance, which were granted. Still further, on 06.01.2017, again neither the petitioner appeared nor he was represented by any counsel and for the second time, his bail/surety bonds were forfeited and the warrant of arrest were issued for 19.01.2017. Since he did not appear on 19.01.2017, the Appellate Court heard the arguments in absence of the petitioner/appellant. Again on 24.01.2017 and 13.02.2017 the case was listed for further arguments, but the present petitioner did not appear before the Appellate Court. Ultimately, vide the judgment dated 17.02.2017, the appeal was heard in absence of the present petitioner/applicant and the same was ordered to be dismissed.

6. Learned counsel for the respondent submits that from these submissions, it was abundantly cleared that the present petitioner even tried to delay the proceedings before the Appellate Court and intentionally did not appear before the Appellate Court for several years. Even the present appeal has been filed after a delay of 1311 days i.e after a delay of more than 5 years

without any justification. Even before this Court, the matter remained pending and several opportunities were granted to the petitioner to settle the matter with the respondent, however, he failed to make the payments as per his commitment. Thus, the application as well as the main petition are liable to be dismissed by this Court.

7. I have heard the learned counsel for the parties and perused the record.

8. I find sufficient force in the submissions made by learned counsel for the respondent and find no ground to allow the present application. First of all, the respondent has placed on record the zimni orders passed by the Appellate Court as Annexure R2/1 and Annexure R2/2, which clearly show that even before the Appellate Court, the present petitioner/appellant made all attempts to delay the disposal of the appeal filed by him before the Sessions Court at Mansa. Even he did not appear at the time of the disposal of the appeal and in his absence only, the appeal was decided by the Court of Additional Sessions Judge, Mansa on 17.02.2017. Secondly, from 17.02.2017 to 12.09.2022 i.e for more than five and half years, the present petitioner was absconding and did not prefer any revision petition before this Court. Even he was arrested by the police on 12.07.2022 and the revision petition was filed on 02.12.2022 i.e after five months of his arrest and no grounds have been mentioned for condonation of delay in filing the present revision petition. Only a false plea has been raised that the present petitioner was under treatment from a Hakim at Aurangabad (U.P). Neither the name of any Hakim/doctor has been disclosed nor any evidence has been annexed with the present revision petition to show that the petitioner was ever suffering from any disease or was ever

treated by the doctor. No medical record/test reports have been annexed with the present case to substantiate the arguments made by learned counsel for the petitioner. Thus, it is apparent that the present petitioner is guilty of serious misconduct and the present application sans merit and deserves dismissal by this Court. Thus, the application under Section 5 of the Limitation Act is ordered to be dismissed.

Main case

1. Since the application for condonation of delay in filing the present revision petition has been ordered to be dismissed, no separate orders are required to be passed in the main case. The petition is accordingly, ordered to be dismissed.
2. A copy of this order may be forwarded to the Chief Judicial Magistrate, Mansa, who shall issue non-bailable warrants against the present petitioner to procure his presence and shall commit him to custody for undergoing the remaining part of the sentence.
3. Pending application(s), if any, also disposed off, accordingly.

05.09.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

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