HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

SLA No. 58/2016
c/w
CONCR No. 54/2016

Soma Devi …..Appellant(s)/Petitioner(s)

Through: Mr. R. P. Sharma, Adv.

vs

Sunita Devi and others ….. Respondent(s)

Through: Mr. Hari Hartar Singh, Adv.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
27.08.2024

CONCR No. 54/2016

1. The instant application has been moved by the applicant for condonation of delay in seeking leave to file appeal against judgment dated 05.06.2014 passed by the Judicial Magistrate 1st Class, Bishnah in case titled as "State vs. Sunita Devi".

2. It is being contended in the application that the applicant herein being the complainant in the aforesaid case filed against the non-applicant herein was being contested by the prosecution without the involvement/association of the complainant applicant herein and that the applicant herein came to know about the passing of the judgment dated 05.06.2014 in favour of the accused respondent herein after visiting the office of Zilla Sainik Board for getting her pension dispute resolved, whereafter upon enquiry made the passing of the said judgment came to the knowledge of the complainant applicant herein, whereupon the copy of the judgment was obtained by her and after seeking legal advice in the matter, the appeal for challenging the aforesaid judgment came to be drawn, prepared and got filed by the applicant.

3. It is being also stated that the prosecution has failed to conduct the trial of the case properly having resulted into acquittal of the accused non-applicant herein which, as such, necessitates throwing challenge to the said judgment by the complainant applicant herein.

4. **Objections** to the application have been filed by the non-applicant, wherein it has been, *inter alia,* stated that the complainant applicant herein was aware of the proper conduct of the trial of the case before the trial court and had also during the course of the proceedings before the trial court filed an application for summoning of a material witness to the case, which application came to be however, rejected by the trial court.

5. It is being further stated that besides a transfer application have had also been filed by the complainant applicant herein for transfer of the case from the trial court to any other court of competent jurisdiction, which application as well came to be rejected.

6. **Heard learned counsel for the parties and perused the record**.

7. Perusal of the record reveals that indisputably the case before the trial court have had been conducted by the Prosecuting Officer on behalf of the State and the applicant herein being the complainant upon whose complaint, the said case had been instituted before the trial court against the accused/non-applicant, indisputably has not been associated with the trial of the case, notwithstanding the filing of the aforesaid applications before the trial court.

8. Perusal of the record in general and the application in hand in particular, inasmuch as, the objections filed thereto manifestly show that the plea raised by the complainant applicant herein *qua* the knowledge of the judgment dated 05.06.2014 has not been disputed or denied with any supporting

material by the non-applicant herein whereupon after coming to know about the same as per the version of the complainant applicant herein in the month of June, 2016 itself from the office of Zilla Sainik Board, the complainant applicant herein obtained a copy of the judgment in question and took steps for filing of the appeal accompanying the application seeking leave to file the same.

9. From the aforesaid facts and circumstances obtaining in the matter, it can safely be said that the delay occasioned in the matter for preferring the said appeal has not been either deliberate or intentional on the part of the complainant applicant herein.

Accordingly, for securing the ends of justice, the instant application deserves to be allowed and is accordingly, allowed subject to payment of cost of Rs. 1000/- to be payable by the applicant herein to the non-applicant within a week's time.

10. Disposed of.

SLA No. 58/2016

1. Heard learned counsel for the parties and perused the record.

2. For the reasons stated in the application, same is allowed and the leave to file appeal is granted.

3. Registry is directed to register, diarize and list the appeal on 25.09.2024.

(JAVED IQBAL WANI)
JUDGE

Jammu
27.08.2024
Rakesh

Rakesh Kumar
2024.08.06 20:45
I attest to the accuracy and
integrity of this document