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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-39900-2021 in/and
CRM-A-587-2021
Date of Decision: 29.11.2024

Jaswinder Kaur ... Applicant
Versus

Kulwant Singh ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Pranav Chadha, Advocate,
for the applicant.

Mr. Lokesh Vohra, Advocate,
for the respondent.

MANISHA BATRA, J. (Oral)

CRM-39900-2021

This application has been filed seeking condonation of delay of 505 days in filing the application for seeking leave to file the appeal which has been preferred against the judgment of acquittal dated 01.09.2018 passed by the Court of learned Judicial Magistrate Ist Class, Amritsar in Criminal Complaint No.4688 of 2017 titled as *Jaswinder Kaur v. Kulwant Singh* filed under Section 138 of the Negotiable Instruments Act, 1881 (For short “NI Act”).

It is submitted in the application that an appeal against the judgment of acquittal dated 01.09.2018, had been filed by the applicant before the Court of Sessions, Amritsar on 26.09.2018. The same had been withdrawn subsequently on 02.02.2019 with liberty to approach this

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Court. The applicant could not engage a counsel due to paucity of funds and moved an application for engaging counsel through legal aid and her case was marked to legal aid counsel by letter dated 02.03.2020. The application was filed on 28.07.2020 since due to outbreak pandemic of Covid 2019, this Court remained closed.

It is argued by learned counsel for the applicant that in view of the circumstances as mentioned in the application, the delay in filing application for grant of leave to appeal deserves to be condoned.

On perusal of record, it is revealed that the applicant has not placed any material on record to show that any appeal against the judgment dated 01.09.2018 had been filed by her before the Sessions Court or that the same had been withdrawn on 02.02.2019. Even if her version to this effect is believed, still no reasonable explanation for not filing appeal before this Court till 28.07.2020 has been given. It is well settled proposition of law that law of limitation may harshly affect a particular party but it has to apply with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds. Due to delay in filing of this application, a valuable right has been created in favour of the respondent and it is well established that once a valuable right is accrued in favour of one party as a result of failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both the parties equally and

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then alone the ends of justice can be achieved. Reference in this regard can be had to the observations as made by Hon'ble Apex Court in case cited as **Balwant Singh (Dead) v. Jagdish Singh and others**, 2010 (8) SCC 685 and to cases reported as **Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another**, 2010 (5) SCC 459; **Amalendu Kumar Bera and others v. The State of West Bengal**, 2013(2) RCR (Civil) 534 and **P.K. Ramachandran v. State of Kerala and another**, 1997 (4) RCR (Civil) 242. Since the delay in filing of the application has not been satisfactorily explained by the applicant, therefore, it is held that the present application does not deserve to be allowed. Accordingly, the same stands dismissed.

However, since this Court has heard learned counsel for the parties at considerable length, hence this Court is inclined to decide the application for grant of leave to file on merits.

CRM-A-587-2021

This application has been filed by the applicant under Section 378 (4) of the Code of Criminal Procedure seeking leave to file appeal against the judgment of acquittal dated 01.09.2018 passed in the aforementioned complaint.

Brief facts relevant for the purpose of disposal of this application are that the aforementioned complaint had been filed by the applicant under Section 138 of the NI Act against the respondent on the allegations that she lent an amount of Rs.1,00,000/- to the respondent in the

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month of October 2016 by way of friendly loan. To discharge his legally enforceable debt of repayment of the aforementioned amount, the respondent had issued a cheque in her favour. The said cheque had been dishonoured on presentation. Despite service of a statutory notice upon the respondent, he failed to make payment thereby compelling her to file the complaint. Process under Section 138 of the NI Act was issued against the respondent by learned trial Magistrate after considering the preliminary evidence. The respondent appeared in response to the notice. Notice of accusation was served upon him. The case was posted for producing evidence by the present applicant-complainant. However, since she failed to produce any evidence despite availing last opportunity, therefore, the learned trial Court was constrained to close the same by order dated 25.07.2018. Then by the impugned judgment dated 01.09.2018, the respondent had been acquitted of the allegations as levelled against him.

It is argued by learned counsel for the applicant that the impugned judgment of acquittal is liable to be set aside as while passing the same, the learned trial Magistrate did not apply his judicious mind. It ignored the fact that no sufficient opportunity to lead evidence had been granted to the applicant and her evidence was closed by order of the Court. It is submitted that the learned trial Court also did not consider the fact that it was the respondent who had not been regularly appearing before the Court to ensure recording of evidence of the applicant. The impugned order was passed in a hasty manner. Only two opportunities were granted to the applicant to conclude her evidence. She was willing to get herself cross-

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examined before the learned trial Court but was not given any such direction. Therefore, it is argued that the impugned judgment is liable to be set aside, the application deserves to be allowed and she deserves to be granted leave to file appeal against the judgment of acquittal and pursue the same.

Per contra, learned counsel for the respondent has argued that there was no illegality or infirmity in the order passed by the learned trial Court. Sufficient effective opportunities for appearance of the applicant for her cross-examination and for producing other witnesses, had been granted to her. However, she failed to produce the same despite availing last opportunity and it was in these circumstances that the evidence of the applicant had been closed by the learned trial Court. It is, therefore, argued that no ground has been made out for allowing the application.

After giving thoughtful consideration to the contentions as raised and on going through the material placed on record, this Court is of the considered opinion that no sufficient ground has been made out for allowing the application. A perusal of the material placed on record and the contents of the judgment of acquittal dated 01.09.2018 reveals that after notice of accusation was served upon the respondent, he sought to cross-examine the present applicant as a witness. She was given due opportunity to appear and present herself for that purpose but failed to do so and it was in those circumstances that her evidence was closed by order of the Court on 25.07.2018. The said order has not been challenged by the applicant by filing any revision petition. Interestingly in the grounds of appeal, she has

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challenged the order dated 25.07.2018 also by way of appeal itself though the order dated 25.07.2018 is not appealable one and only a revision petition could be preferred against the same. More so, the question of consideration of challenge of this order can be considered only if leave to appeal is granted by this Court which in the above discussed circumstances to the effect that no reasonable ground has been made out for holding that there was any illegality or infirmity in the impugned order, does not deserve to be accepted. The learned trial Court was compelled to record the finding of acquittal of the respondent due to the reason that the applicant had failed to produce even an iota of evidence on record to substantiate her claim as set out in the complaint filed by her. This order, therefore, cannot be said to be erroneous, perverse or contrary to the material available on record. Therefore, there is no infirmity in the reasoning assigned by the learned trial Court for acquitting the respondent. As such, it is held that the acquittal of the respondent had been rightly recorded by the learned trial Court by the impugned judgment dated 01.09.2018 after appreciating the entire facts and circumstances to the present case as no other view was possible, Accordingly, the application for grant of leave to file and pursue the appeal is also dismissed.

29.11.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No