



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

248

**CRM-A-1790-2023 (O&M)
Date of Decision: 04.12.2024**

M/S DEVANS MODERN BREWERIES LTD**.....APPLICANT****V/S****M/S GARCHA WINE TRADERS L-I AND OTHERS****.....RESPONDENTS****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Aman Bahri, Advocate and
Mr. Shubham Pathania, Advocate
for the applicant.

SANDEEP MOUDGIL, J**CRM-53202-2023**

This is an application under Section 5 of the Limitation Act praying for condonation of delay of 640 days in filing the appeal.

For the reasons mentioned in the application, the application stands allowed and delay of 640 days in filing the appeal is hereby condoned.

Application stands disposed of.

CRM-A-1790-2023

1. This is an application for grant of leave to appeal, under Section 378(4) of the Code of Criminal Procedure, 1973, against the order dated 17.12.2019 passed by the learned Judicial Magistrate Ist Class, Ludhiana,



whereby the accused persons have been acquitted in the criminal Complaint No. COMA/12068/2016 titled “M/s Devans Modern Breweries Ltd. Vs. M/s Garcha Wine Traders L-1, Sangrur & others” filed under Section 138 of the Negotiable Instruments Act, 1881.

2. It is contended by the learned counsel for the appellant that the learned Judicial Magistrate Ist Class, Ludhiana (for short – ‘trial Court’) has gravely erred in acquitting the accused because accused/respondents were summoned vide order dated 02.12.2016 but despite service they did not appear and were declared proclaimed offenders vide order dated 05.09.2018. However, respondent No.3 challenged the said order, before this Hon’ble Court, declaring him Proclaimed Offender and was directed by this Hon’ble Court to appear before the learned trial Court whereupon he appeared before the learned trial Court and appellant applied for all the zimni orders from 05.09.2018 to 13.11.2019. Thereafter, CRM-M-12406 of 2019 was filed by respondent No.3 and in this manner, both petitions filed by respondent No.3 remained pending before this Hon’ble Court which were ultimately withdrawn by him vide order dated 06.09.2023, Annexure A-6 & A-7. On inquiries being made from the court of learned JMIC about the status of complaint, it transpired that the complaint was dismissed in default for want of prosecution, however, counsel for the appellant did not inform the appellant about the dismissal of the complaint and, thus, the appellant applied for certified copies of all zimni orders including certified copy of impugned order dated 17.12.2019, which were received by the appellant on 22.09.2023 and thereafter, the present appeal was filed without any further delay. It was dated 06.09.2023 when the appellant for the first time came to know that complaint has been dismissed in default for want of prosecution on



17.12.2019. As such, the appeal is well within limitation period i.e. within 60 days from the date of knowledge about the dismissal of complaint.

3. It is further argued on behalf of the appellant that respondent No.3 intentionally kept his petitions CRM-M-2050 of 2019 and CRM-M-12406 of 2019 pending before this Hon'ble Court and after the complaint was dismissed in default, he withdrew both the petitions on the same day. It is due to the pendency of the above petitions before this Hon'ble Court, the appellant could not pursue the complaint before the trial Court. Therefore, the present appeal is liable to be allowed and impugned order is liable to be set aside.

4. Heard learned counsel for the appellant and case file also perused with his able assistance.

5. Complaint under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881, was filed by the complainant/appellant in the year 2016 and accused were summoned for 20.01.2017, vide order dated 02.12.2016, Annexure A-2. Vide order dated 05.09.2018, accused were declared proclaimed offender and file was ordered to be consigned to the record room for being retrieved as and when the accused surrender or is arrested/produced by the police. The said proclamation order was challenged by respondent No.3 before this Court in CRM-M-2050-2019 and this Court, vide order dated 18.01.2019, Annexure P-3, permitted respondent No.3 to appear before the trial Court to join proceedings of complaint, with a further direction to the trial Court to release him on interim bail. On appearance before the trial Court, vide order dated 01.02.2019, the trial Court recalled the case file and granted bail to the respondent No.3 and also directed Ahlmad to issue notice to the complainant for 28.02.2019 for appearance. Respondent No.3, thereafter, on one hand filed application for dismissal of the complaint and discharge wherein complainant



was asked to file reply but on the other hand filed CRM-M-12406 of 2019, before this Court, wherein notice was issued for 04.07.2019 and in this view of the matter, complainant missed the proceedings of the complaint before trial Court. Respondent No.3 after dismissal of the complaint in default for want of prosecution withdrew his both the above mentioned petitions on the same day i.e. 6.9.2023, which shows the conduct and intention of respondent no.3 that accused, firstly, wanted to delay the proceedings of the complaint and secondly, to get the purpose of filing the complaint defeated on one way or the other.

6. This Court, thus, finds it to be a fit case where there is a necessity to interfere in the impugned order. Resultantly, the impugned order dated 17.12.2019 passed by the learned Judicial Magistrate Ist Class, Ludhiana, dismissing the complaint - COMA/12068/2016 titled "M/s Devans Modern Breweries Ltd. Vs. M/s Garcha Wine Traders L-1, Sangrur & others" under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881, is set aside and the matter is remanded back to the trial Court to decide the same afresh after hearing both the parties, in accordance with law.

04.12.2024
anuradha/poonam negi(v)

(SANDEEP MOUDGIL)
JUDGE

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