

CRR-56-2024 (O&M)

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137 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-56-2024 (O&M)

DATE OF DECISION:-28.02.2024

Bhuvnesh Kumar

...Petitioner.

Vs.

State of Punjab and another

...Respondents..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Munish Puri, Advocate for the petitioner.

Mr. Kewal Singh, Addl. A.G., Punjab,
for respondent No.1-State.

None for respondent No.2.

HARKESH MANUJA, J. (Oral)

CRM-1474-2024

Prayer in this application is for condonation of delay of 323 days
in filing the present revision.

Learned counsel for the applicant-petitioner submits that the delay
in filing the present revision petition occurred due to bonafide reasons as
the applicant-petitioner was not aware of the technicalities of law as well as
passing of order dated 23.11.2022 and as soon as this fact come to his
knowledge, he immediately filed the present petition.

Having heard learned counsel for the parties and gone through the
contents of the application, apparently, the same makes out sufficient cause
for condoning the delay.

Accordingly, application is allowed and delay of 323 days in
filing the revision petition is condoned.

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Main case

1. By way of present revision petition, prayer has been made for setting aside the order dated 18.11.2022 passed by the Court of learned Judicial Magistrate Ist Class, Pathankot, whereby an application filed at the instance of petitioner-accused for grant of an opportunity to cross-examine the prosecution witnesses, PW-1 and PW-2 i.e. the complainant and her mother, stood declined.

2. The petitioner was implicated as an accused in case FIR No.112 dated 22.11.2015, registered under Sections 498 and 34 IPC, at Police Station Kanwan, Pathankot, wherein the charges were framed and thereafter, the complainant and her mother were examined as PW-1 & PW-2 on 21.11.2016 & 22.03.2017, respectively, though their cross-examination was recorded as NIL. At a later stage, when the prosecution evidence was still going on, an application was filed at the instance of petitioner, with the change of his counsel, seeking permission to cross-examine PW-1 and PW-2, however, the same was declined vide order dated 18.11.2022, which has been impugned by way of present revision petition.

3. Aggrieved against the aforesaid order, learned counsel for the petitioner submits that in case the petitioner was not afforded an opportunity to cross-examine the witnesses, their examination-in-chief would be taken at face value thereby causing serious prejudice to the rights of the petitioner. He further submits that in fact the cross-examination was recorded as NIL on account of the Advocate representing the petitioner being not acting diligently and now, with the change of counsel, the application for seeking permission to cross-examine the aforesaid witnesses was moved, which in the interest of justice was required to be allowed.

4. Despite service, no one has appeared on behalf of respondent No.2.

5. Learned State counsel opposes the prayer made in the present petition while submitting that there has been deliberate negligence on the part of the petitioner in defending himself as the examination-in-chief of PW-1 and PW-2 was recorded on 21.11.2016 and 22.03.2017, respectively, whereas the application in hand was filed after an inordinate delay of 05 years, thus, the impugned order warrants no interference by this Court.

6. I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the petitioner.

7. No doubt, the petitioner through his counsel was afforded opportunity to cross-examine PW-1 and PW-2, having failed to do so, the opportunity was recorded as NIL, however, in the humble opinion of this Court, the procedural aspects cannot be stretched to an extent of defeating the substantial rights of the petitioner, particularly, when the negligence is apparently not attributable to him being duly represented through a counsel, who in-turn failed to cross-examine the witnesses appearing on behalf of the prosecution and immediately, with the change of his counsel, an application for seeking permission to cross-examine the prosecution witnesses was filed. Apparently, in the absence of grant of opportunity to cross-examine the prosecution witnesses would amount to denial of adequate opportunity to the petitioner to defend himself in an effective manner, thereby resulting into serious prejudice to his rights. On the other hand, no prejudice is going to be caused to respondent No.2 as the trial was at the stage of prosecution evidence when the application was filed.

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8. Thus, in order to safeguard the substantial rights of the petitioner relating to his liberty and chance of fair trial, the impugned order dated 18.11.2022 is hereby set aside. The petitioner be granted an opportunity to cross-examine PW-1 and PW-2, considering the delay, the same shall, however, be subject to payment of costs of Rs.10,000/- to be paid to the complainant on the next date of hearing before the trial Court.
9. Accordingly, the petition is allowed.

28.02.2024
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(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No