

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-1918-2018 in/and

CRR-176-2018

Date of Decision: 20.02.2025

Gurmail Singh

... Petitioner

VS.

Pawa Kumar & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. SS Rangi, Advocate and
Mr. Fateh Sahota, Advocate for the petitioner

Mr. Sunil Agnihotri, Advocate for respondent No.1

Mr. Jaspal Singh Guru, AAG Punjab

Sandeep Moudgil, J.

(1). This is an application under Section 5 of the Limitation Act praying for condonation of delay of 204 days in filing the criminal revision petition which has been filed under Section 401 CrPC by the applicant/petitioner, seeking to quash the judgment dated 13.02.2017 passed by Addl. Sessions Judge, Ludhiana affirming the judgment dated 27.03.2015 passed by JMIC, Khanna vide which respondent No.1-Pawan Kumar has been acquitted in FIR No.97 dated 21.04.2009 under Sections 420/467/468/471 IPC registered at Police Station Sadar Khanna.

(2). In the application for condonation of delay, it is averred that the Addl. Sessions Judge rendered its judgment on 13.02.2017 and a certified copy thereof was applied by the lower court counsel on 15.02.2017 which was delivered on 04.03.2017 and after obtaining the certified copy, the petitioner traveled out of station to serve his seriously ill relative and remained there until 29.10.2017 and upon returning, the petitioner promptly contacted their local counsel on 30.10.2017 and asked for his file along with certified copy of the judgment of the

lower appellate court. It is further submitted that clerk of the counsel below searched for the file but could not locate it and assured the petitioner to call him back after tracing out his file and ultimately on 18.12.2017, the petitioner was informed that the file had been found and thereafter, he collected the file and judgment from the office of the lower court counsel on 19.12.2017 and on the very next day i.e. 20.12.2017, the petitioner approached the counsel to file a revision petition before this Court and as such, a delay of 204 days has occurred inevitably and unintentionally.

(3). Heard learned counsel for the petitioner.

(4). Before going into the merits of the case, first of all, it should be stated that in a case of this nature for condonation of delay, it is well settled that length of delay is not material, but the reasons stated thereof for condonation of delay. In other words, for condonation of delay, the reasons adduced must be properly pleaded, convincing, acceptable and cogent explanation should be offered for condonation of the delay in default thereof, the Courts could not exercise its discretion in the proper perspective to advance substantial justice.

(5). In **Ram Nath Sao @ Ram Sahu & Others versus Gobardhan Sao & Others, AIR 2002 SC 1201** the position has been succinctly set out in para 12 which reads as under:-

“12. ...Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, and while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner....”

(6). Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter rather acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable for want of acceptable explanation whereas in certain other cases, delay of a very long range are condoned when the Courts are satisfied with the just and fully explained reasons with no scope as to the credibility and bona fide of the applicant and once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion.

(7). In the present case, the petitioner has failed to give any justifiable explanation for the delay of 204 days in approaching this Court against the order passed by the Addl. Sessions Judge on 13.02.2017. No particulars as to what immediate steps were taken by the petitioner to reconstruct the file, has been explained if it was misplaced by the office of lower court counsel. The callous attitude of the petitioner is self-axiomatic, for, he ought to have immediately taken steps to take appropriate recourse in challenging the appellate court judgment and indeed kept himself busy in treating his relative which took him nearly 8 months and when he woke up from this slumber, he statedly pursued in tracing for the file which he left heyway in the office of the counsel below.

(8). The delay cannot be condoned simply because the petitioner's case is hard and calls for sympathy or merely out of benevolence to the party seeking relief. In granting the indulgence and condoning the delay, it must be proved beyond the shadow of doubt that the petitioner was diligent and was not guilty of negligence whatsoever. The sufficient cause within the contemplation of the limitation provision must be a cause which is beyond the control of the party invoking the aid of the provisions. The petitioner-complainant's inaction and

lethargy are glaringly evident, as he has utterly and inexplicably failed to demonstrate even a modicum of diligence, earnestness, and promptness in pursuing his case, thereby rendering his delay of 204 days wholly unjustifiable, inexcusable, and a clear abuse of the process of law.

(9). The Supreme Court in the case of **Ramlal v. Rewa Coalfields Ltd.** **AIR 1962 SC 361**, has held that the cause for the delay in filing the appeal which by due care and attention could have been avoided cannot be a sufficient cause within the meaning of the limitation provision. Where no negligence, nor inaction, or want of bona fides 'can be imputed to the appellant a liberal construction of the provisions has to be made in order to advance substantial justice. Seekers of justice must come with clean hands.

(10). Even on merits also, it becomes worthwhile to note that the lower appellate court while considering the allegation as to whether respondent No.1 forged the public record i.e. resolution dated 07.08.2003 of the Society by inserting words in Punjabi intending to use the same for the purpose of cheating, affirmed the finding returned by the trial court and acquitted him of the charges leveled firstly on the ground that there was unexplained and undue delay in lodging the FIR inasmuch as the resolution stated tampered is of dated 07.08.2003 whereas the complaint Ex.P1 was moved after 5 years i.e. 02.09.2008. Secondly, the President of the Society was not joined in the investigation to prove the tampering, if any, which in itself casts aspersion on the conduct of the petitioner-complainant Gurmail Singh who is the Sarpanch and thirdly, the deposition of PW6 Darshan Singh and PW8 Bhupinder Singh would show that the questioned writings (Mark A4) were there at the time when the resolution was read over to the members of the Society by the President of the Society before appending their

signatures over the same and as such, the FSL report Ex.PW7/A was rightly held to be of not much significance, as a result of which, the allegations leveled against the respondent No.1 could not be proved by the prosecution and hence he has been acquitted.

(11). In view of the above discussion, the application seeking condonation of delay of 204 days in filing the revision petition is dismissed and as a corollary, the revision petition also fails and is accordingly dismissed.

(12). Ordered accordingly.

20.02.2025
V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No