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

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**CRM No.35279 of 2024 in/and
CRR No.1655 of 2024
Date of Decision: 17.02.2025**

Gurmej Singh

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Rajesh Bhateja, Advocate,
for the applicant-petitioner.

Ms. Sakshi Bakshi, AAG, Punjab,
for the respondent-State.

MANISHA BATRA, J. (Oral)

CRM No.35279 of 2024

The instant application has been filed by the applicant-petitioner seeking condonation of delay of 239 days in filing of the revision petition whereby he is seeking to challenge the order dated 06.10.2023 passed by the Court of learned Additional Sessions Judge, Ferozepur in case titled as *State vs. Harmanjit Singh @ Harman @ Sparrow* arising out of FIR No.230 dated 17.11.2019 registered under Sections 306 and 34 of IPC at Police Station Guru Harsahai, District Ferozepur.

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It is submitted by the applicant that he could not file the revision petition within the period of limitation due to non availability of required documents. His cross-examination was to be conducted before the trial Court and after waiting for the same to be done for a long time, he filed the revision petition. It is submitted that the delay of 239 days in filing the petition is not intentional and, therefore, prayer has been made for allowing the application.

Learned State counsel who has advance notice of the application has contested the same without filing any reply by submitting that there is a huge delay in filing the revision petition challenging the order dated 06.10.2023 and no reasonable explanation for this delay has been rendered by the applicant. It is, therefore, argued that the delay does not deserve to be condoned.

The applicant is seeking condonation of delay of 239 days in filing the revision petition. The only reason given in the application for condoning the delay is that some documents were to be collected and cross-examination of the applicant was to be completed and that is why he could not file the revision petition within limitation. Before proceeding further, this Court considers it proper to discuss the well settled proposition of law with regard to the condonation of delay. The Hon'ble Supreme Court has observed in a catena of authorities that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute prescribes and the Courts have no power to extend the period of

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limitation on equitable grounds. Hon'ble Apex Court in ***Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and another, 2010 (5) SCC, 459***, observed that the law of limitation is founded on public policy and prescribes a period within which legal remedy can be availed for redressal of the legal injury. At the same time, the Courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. It was observed that although no hard and fast rule can be laid down in dealing with the applications of condonation of delay but there must be a stricter approach where the delay is inordinate and liberal approach in condoning the delay of short duration. In case of ***Amalendu Kumar Bera and others Versus The State of West Bengal, 2013 (2) RCR (Civil) 534***, the Supreme Court observed that the delay in filing an appeal or revision cannot be mechanically condoned, in the absence of sufficient cause for delay. In ***Balwant Singh (dead) v. Jagdish Singh and others, 2010(8) SCC 685***, it was observed by Hon'ble Supreme Court that the term 'sufficient cause' has to receive liberal construction but still it must squarely fall within the concept of reasonable time and proper conduct of the concerned party. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. It was held that once a valuable right, is accrued in favour of one party as a result of the 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,

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particularly when the delay is directly a result of negligence, default or inaction of that party. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of its acting vigilantly. On applying the above discussed proposition of law to the present case, it has been noticed that though the applicant has prayed for condoning delay of 239 days in filing the revision petition, however, the explanation that has been given for this purpose is not at all satisfactory or reasonable. Simply saying that the revision could not be filed due to non availability of some documents does not serve any purpose. Even the details of such documents has not been mentioned. Moreso, not conducting of his cross-examination before trial Court can also not be stated to be any reasonable ground. In such circumstances, this Court is of the opinion that no case is made out for condoning the delay and accordingly, the present application for condonation of delay of 239 days in filing the revision petition stands dismissed.

However, since this Court has heard learned counsel for the applicant at length, therefore, is inclined to decide the main petition on merits.

CRR No.1655 of 2024

1. The instant petition has been filed by the petitioner making challenge to the order dated 06.10.2023 passed by the Court of learned Additional Sessions Judge, Ferozepur in case titled as *State vs. Harmanjit*

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Singh @ Harman @ Sparrow arising out of FIR No.230 dated 17.11.2019 registered under Sections 306 and 34 of IPC at Police Station Guru Harsahai, District Ferozepur, whereby an application filed by the present petitioner/prosecution for summoning the respondent No.2 as an additional accused had been dismissed.

2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned FIR had been registered on the basis of statement recorded by the present petitioner on the allegations that his brother Raj Kumar was married with Mandeep Kaur. There was matrimonial discord between Mandeep Kaur and the victim Raj Kumar. Mandeep Kaur had started staying at her parental house. The victim used to remain upset because of this fact. He used to tell the complainant that he would commit suicide due to grief. On 17.11.2019, the victim did not come to his work place where he was running an agency for sale of TVS vehicles. His assistant Gurdev Singh went to the room of the victim and found him lying in an unconscious condition. He was rushed to hospital but had died. While alleging that the accused Harman Singh who was brother-in-law of the victim and his close associate Ashwani had abetted suicide by the victim, he prayed for taking action.

3. After registration of FIR, investigation proceedings were initiated. During investigation, accused Harman Singh was nominated as an accused and was arrested. The above named Ashwani was, however, found to be innocent and had not been arrested and challaned. During trial, the

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statement of the petitioner had been recorded before the learned trial Court by way of examination-in-chief and thereafter the complainant/prosecution moved an application under Section 319 of Cr.P.C. for summoning the above named Ashwani as additional accused, which was dismissed by the learned trial Court by passing the impugned order.

4. It is argued by learned counsel for the petitioner that the impugned order is liable to be set aside as the same is not sustainable in the eyes of law. The proposed additional accused was named in the FIR. There is specific allegation against him that he along with the co-accused Harman Singh had caused pain and suffering to the victim thereby forcing him to commit suicide. The testimony of the petitioner as recorded before the learned trial Court also proved this fact. However, while passing the impugned order, the learned trial Court did not take this fact into consideration and passed a vague and non speaking order. With these broad submissions, it is urged that the impugned order is liable to be set aside, the petition deserves to be accepted and further that the application moved under Section 319 of Cr.P.C. by the petitioner/prosecution deserves to be allowed.

5. Learned State counsel, on the other hand, has not raised any serious objection to the allowing of the petition.

6. I have heard learned counsel for the parties at considerable length and have carefully gone through the material which has been placed on record.

7. Section 319 of Cr.P.C. empowers the Court to add any person,

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not being the accused before it, but against whom there appears during trial sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with other accused. The principle of law with reference to exercise of jurisdiction under this Section has been well settled by the Constitution Bench of Hon'ble Supreme Court in a celebrated pronouncement cited as **Hardeep Singh and others Vs. State of Punjab and others**, (2014) 3 SCC 92, wherein it was observed that the power under Section 319 Cr.P.C. is discretionary and an extraordinary power. It has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the material placed before the Court that such power should be exercised and not in a casual and cavalier manner. It was also observed that though only a prima facie case is to be established from the evidence led before the Court, not necessarily tested on the anvil of cross-examination, it requires much strong evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as has been established at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the Court should refrain from exercising power under Section 319 of Cr.P.C.

8. It is also well settled proposition of law that an order under

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Section 319 of the Cr.P.C. should not be passed only because the first informant or one of the witnesses seeks to implicate other person(s). Sufficient and cogent reasons are required to be assigned by the Court so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. The evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction and for this purpose, the Courts are required to apply stringent tests, one of such tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.

9. On applying the above discussed proposition of law to the peculiar facts and circumstances of the present case, this Court is of the considered opinion that the learned trial Court did not commit any illegality in dismissing the application filed by the petitioner. On a perusal of contents of the FIR, it is revealed that the only allegation as levelled in the FIR is that the victim committed suicide due to feeling aggrieved from Harman Singh and his companion Ashwani i.e. the present respondent No.2. On a perusal of his sworn statement (examination-in-chief) as recorded before learned trial Court, it is revealed that the petitioner had taken a totally different stand by saying that while on way to Ferozepur hospital, the victim had disclosed to him that the accused Harmanjit Singh and his friend Ashwani had come to his room and forcibly administered some poisonous substance. The petitioner also stated that he had videographed the narration as made by the victim. The learned trial Court while passing the impugned order observed

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that there was no evidence in support of the allegations as made by the present petitioner in his sworn deposition with regard to administration of some poisonous substance to the deceased and hence, no case for summoning Ashwani as additional accused was made out.

10. In the instant petition, a specific plea has been taken by the petitioner in Para No.7 of the petition that he made minor improvement in his sworn deposition due to change of atmosphere and circumstances in his family. This explanation cannot be accepted in the eyes of law to be any reasonable explanation for the purpose of assuming that whatever the petitioner deposed before the learned trial Court with regard to involvement of the proposed accused was a minor improvement and it was on account of some change in circumstances. The stand as taken in the sworn deposition by the petitioner was in total contradiction to the stand as taken in the statement recorded by him at the time of registration of FIR. The investigating agency had conducted thorough investigation in the matter and reached at a conclusion that no case for presuming involvement of the proposed accused in abetting suicide by the victim had been made out. The evidence produced by the petitioner before the learned trial Court could certainly be taken into consideration if the same inspired any confidence. However, firstly, the same is in total contradiction to the stand earlier taken and consequently there is no basis for the same. More so, the plea as taken by the petitioner in the petition itself to the effect that it was a minor improvement due to change in some circumstances has no legs to stand. As

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such, this Court is of the considered opinion that there was no scope for the trial Court under Section 319 of Cr.P.C. to form any opinion as to the guilt of the proposed additional accused and in the absence of the same, it rightly refrained itself from exercising powers under Section 319 of Cr.P.C. as the satisfaction desirable for summoning the proposed accused under Section 319 of Cr.P.C. was not found on record. As such, no illegality or irregularity can be stated to have been committed by learned trial Court while passing the impugned order and dismissing the application of the petitioner which was passed after analyzing the facts of the case in a proper perspective. This Court, therefore, has no reason to interfere with the findings as given by learned trial Court. Accordingly, the petition is dismissed.

17.02.2025
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No