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

**CRM-30682-2015 in/and
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Date of Decision: 14.02.2025**

Simarpal Kaur

..... Applicant

Versus

Chhinder Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Seema Kumari, Advocate for
Mr. G.S. Sandhu, Advocate,
for the applicant.

Mr. Daljeet Singh, Advocate for
Mr. A.S. Manaise, Advocate,
for the respondent.

JASGURPREET SINGH PURI, J. (ORAL)

Learned counsel for the applicant has submitted that in the last order dated 13.02.2025, her name was wrongly typed as Ms. Simran Kaur, Advocate, however, her name is Ms. Seema Kumari and has prayed that the same may be corrected.

In view of the above, the aforesaid typographical mistake is corrected and now the name of the counsel shall be substituted and read as 'Ms. Seema Kumari, Advocate' in place of 'Ms. Simran Kaur, Advocate' in the order dated 13.02.2025.

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The present application has been filed under Section 5 of the Limitation Act for condonation of delay of 604 days in filing the application under Section 378(4) Cr.P.C. for grant of leave to appeal.



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Ms. Seema Kumari, learned counsel appearing on behalf of the applicant has submitted that although there is delay of 604 days in filing of the application under Section 378(4) Cr.P.C. for grant of leave to appeal, but the same has been sufficiently explained in the present application and the reasons given in the application constitute a sufficient cause under Section 5 of the Limitation Act. She further submitted that after the judgment of acquittal which is impugned in the main application, the applicant had preferred an appeal before learned Sessions Court, which was not maintainable still the appeal was dismissed and the aforesaid appeal was filed on 06.12.2013 which was dismissed on 14.05.2015 and thereafter the main application under Section 378(4) Cr.P.C. has been filed on 02.09.2015 and the aforesaid delay was not intentional and it constitutes a sufficient cause under Section 5 of the Limitation Act.

On the other hand, Mr. Daljeet Singh, learned counsel appearing on behalf of the respondent has submitted that since the applicant had preferred an appeal before the Court which did not have any jurisdiction, the same cannot become a ground for condonation of delay.

After hearing the learned counsels for the parties, this Court is of the considered view that the applicant has attached a copy of the judgment whereby she preferred an appeal before learned Sessions Judge, Fazilka which was instituted on 06.12.2013 and the same was decided on 14.05.2015 and now the present application was filed on 02.09.2015. Although the application has not been filed under Section 14 of the Limitation Act but the principles which are so incorporated under Section 14 of the Limitation Act, 1963, would certainly be applicable even for the



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purpose of Section 5 of the Limitation Act so as to ascertain as to whether it would constitute a sufficient cause or not. The *bona fide* of the applicant is not in dispute and in view of the above, this Court is of the considered view that the aforesaid reasoning which has been given in the application does constitute a sufficient cause under Section 5 of the Limitation Act and therefore, the application is allowed. The delay of 604 days in filing of the main application is hereby condoned.

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1. The present application has been filed under Section 378(4) Cr.P.C. for grant of leave to appeal against the judgment of acquittal.
2. Ms. Seema Kumari, learned counsel appearing on behalf of the applicant has submitted that the applicant is the wife and she preferred a criminal complaint against the respondent/husband before learned Magistrate in which respondent/husband has been acquitted. The aforesaid complaint was filed wherein the respondent was summoned to face trial under Sections 406, 498-A, 420, 504 & 506 IPC. Apart from the above, there was one more accused, namely, Rajwinder Kaur against whom allegations were with regard to having relationship with the respondent/husband and she was also summoned but later on *qua* the aforesaid accused, namely, Rajwinder Kaur, the complaint was quashed on 28.01.2008. She further submitted that the respondent/husband has dealt with the applicant with cruelty and also committed a fraud upon the applicant because the respondent/husband was earlier also married which he did not disclose to the applicant and all the allegations which were made against the respondent/husband were duly proved at the time of trial by



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adducing evidence and therefore, the leave to appeal may be granted to the applicant.

3. On the other hand, Mr. Daljeet Singh, learned counsel appearing on behalf of the respondent has submitted that it is a case where a complaint was filed by the applicant/wife before the Court of learned JMJC, Fazilka where the adequate opportunity was granted to the applicant/wife in this regard for the purpose of adducing evidence but qua all the offences which have been invoked in the present case have been dealt with in detail one by one. He further submitted that the applicant had not disclosed that she was earlier married and rather concealed this material fact at the time of filing of the complaint and so far as the marriage with the respondent is concerned, the same was also not proved because nothing was brought on record to show that there had been any marriage solemnized because it was so observed by learned trial Court that neither any Granthi was examined nor any such witness was examined to prove the marriage. He also submitted that even otherwise also during the course of cross-examination of the applicant/wife, she has rather admitted that she was earlier married with Sujjan Singh but there was nothing on record to prove that the marriage was dissolved and in this way even if assumingly the allegations of the applicant/wife were considered to be true the marriage was void. He further submitted that so far as the child born from the applicant and the respondent is concerned, although the child was granted the maintenance under Section 125 Cr.P.C. but that was not because that the marriage between the parties was proved but because even if the child is legitimate or illegitimate, Section 125 Cr.P.C. does not distinguish between the legitimate or illegitimate child.



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He also submitted that even otherwise also in the year 2017, in a revision petition under Section 125 Cr.P.C., the matter was settled between the applicant and the respondent and rather she had accepted an amount of ₹10,00,000/- (Rupees Ten Lacs only) on behalf of herself and on behalf of her daughter and an order was passed in this regard by learned Sessions Court on 03.04.2023. A copy of the order was supplied to this Court for perusal. He further submitted that in this way, no offence was made out by the respondent and respondent was rightly acquitted by learned trial Court.

4. I have heard the learned counsels for the parties.

5. The present is an application filed under Section 378(4) of Cr.P.C. for leave to appeal against the judgment of acquittal. A complaint was filed by the applicant under Sections 406, 498-A, 494, 420, 504, 506 & 34 IPC against her husband and also against another co-accused, namely, Rajwinder Kaur wherein the allegations were pertaining to the fact that they had a relationship with each other but thereafter the summoning of the aforesaid co-accused, namely, Rajwinder Kaur was quashed on 28.01.2008. It was a plea taken by the respondent that the applicant was not even his legally wedded wife nor the same was proved on record and rather it was the case of the applicant/wife that the respondent was earlier married to someone else and he did not disclose the same to her, whereas it was the case of the accused that the applicant/wife was also earlier married with one Sujjan Singh and that the marriage is still in subsistence and the marriage was never dissolved and therefore, there could have been no valid marriage with the respondent in the present case.

6. However, one child was born out of the wedlock between the



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applicant and respondent and he was granted maintenance under Section 125 Cr.P.C. and it was so pleaded by the learned counsel for the respondent that for the purpose of Section 125 Cr.P.C. the child is entitled for grant of maintenance even if the child was legitimate or illegitimate and would not mean that the marriage between the petitioner and respondent was a valid marriage.

7. While considering the aforesaid issue with regard to the validity of marriage between the parties, it was so observed by learned Judicial Magistrate 1st Class, Fazilka that the applicant/complainant has failed to bring on record even an iota of evidence to show that she was legally wedded to the respondent. No ceremony of marriage was averred or proved by the complainant/applicant and no religious Priest was examined in this regard and rather the applicant has admitted in her cross-examination conducted on 31.07.2010 that she was earlier married to one Rajinder Kumar, resident of Purana Bazaar, Rohtak and there is nothing on record to show that any divorce was granted with the aforesaid person. Thereafter she rather volunteered in the cross-examination that earlier she was married to one Sujan Singh and not Rajinder Kumar. CW-2 Harwinder Singh brother of the applicant/complainant also admitted that her sister was earlier married to one Rajinder Kumar alias Sujan Singh and no divorce took place between them and therefore, if at all, there was a marriage with the present accused, the same was void.

8. With regard to the allegations pertaining to Section 406 IPC, the complainant/applicant has failed to prove on record any bill or any document or even any independent evidence to prove any entrustment to the



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respondent. So far as allegations under Section 420 IPC are concerned, no such evidence was brought to show that only essential ingredients of Section 420 IPC were fulfilled.

9. After perusing the aforesaid judgment, record and after hearing the learned counsels for the parties, this Court is of the considered view that no ground is made out for granting leave to appeal to the applicant and therefore, the application being devoid of merit, is hereby dismissed.

14.02.2025

Bhumika/rakesh

**(JASGURPREET SINGH PURI)
JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No