



IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH

CRM-32485-2014 in/and
CRM-A-1650-MA-2014
Date of Decision: 15.05.2025

ANIL JAIN

.....APPELLANT

VERSUS

S. L. VINAYAK

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rajiv Kataria, Advocate for the appellant.

Mr. Dharam Chand Mittal, Advocate
for the respondent.

SANDEEP MOUDGIL, J

CRM-32485-2014

1. The appeal has been filed along with the application under section 5 of the Limitation Act seeking condonation of delay of 833 days in filing the appeal, against the order dated 16.05.2012 passed by JMIC, Chandigarh (hereinafter referred as trial court) for offence under Section 138 of the Negotiable Instruments Act.

2. Learned counsel for the applicant/appellant would submit that the applicant/appellant had filed a revision petition before the Sessions Judge, Chandigarh, against the order dated 16.05.2012 passed by JMIC, Chandigarh, which was dismissed on 18.03.2014, on the ground that such an appeal is

maintainable only before this Court and after obtaining the copy of said order, the applicant/appellant engaged the counsel and has now filed the before this Court. He further submits that the delay in filing the present appeal has occurred due to the above-mentioned reason, which was neither intentional nor deliberate. It has been further submitted that the applicant/appellant was undergoing treatment for open heart surgery at Fortis Hospital on 23.05.2012 and remained admitted w.e.f. 22.05.2012 to 31.05.2012 and also suffered from diseases like Bipolar and Schizophrenia with an episode of Manic without psychotic features since 2011.

3. On the other hand, learned counsel for the respondent has filed short reply by way of an affidavit of S.L. Vinayak-respondent son of Sh. Guran Dass, resident of H.No.B-1, Society Flats, GH-38, Mansa Devi Complex, Panchkula to the affidavit and documents Annexures P-9 & P-10, which is taken on record, who stated that the applicant/appellant did not appear before the trial Court to face cross-examination intentionally on various consecutive dates without any intimation, as such, the evidence of the complainant was closed by order and consequently, the said complaint was dismissed for non-prosecution on 16.05.2012. It has been further submitted that the applicant/appellant never ever made any request before the trial Court seeking adjournment pleading ill health, and no medical certificate was ever produced by him to show his inability to attend the hearing on numerous dates, particularly when his appearance was necessary. It has been further asserted that the affidavit dated 16.05.2019 and the documents marked as Annexures P-9 and P-10 hold no evidentiary value and cannot be relied upon, as they appear to introduce a new ground of ill health for seeking condonation

of delay, which was not pleaded in the application. This seems to be a deliberate attempt to mislead this Court. Furthermore, by placing these documents on record, the applicant is trying to misrepresent the facts. A close examination reveals that these are merely OPD prescription slips listing prescribed medications. They do not indicate that the applicant was suffering from any serious medical condition requiring continuous care or hospitalisation during the relevant period.

4. Having heard learned counsel for the parties and going through the case file, this court is of the considered opinion that there is no illegality or infirmity in the order passed by the trial court

5. A perusal of the application seeking condonation of delay reveals that the learned counsel for the applicant/appellant has merely stated that, upon receiving a copy of the order passed by the Sessions Court, Chandigarh in the revision petition on 18.03.2014, the appellant engaged a counsel and subsequently filed the present appeal without any further delay. It is also asserted that the delay of 833 days was neither intentional nor deliberate. However, this explanation fails to satisfy this Court and is not found to be convincing as it does not sufficiently justify the prolonged delay of 833 days in filing the present appeal.

6. Furthermore, a perusal of Annexures P-9 and P-10 shows that they are merely OPD prescription slips listing prescribed medications, and do not demonstrate that the applicant/appellant was suffering from any serious medical condition necessitating constant care or hospitalization during the relevant period.

7. It is to be borne in mind that the power given to the court under Section 5 of the Limitation Act to condone the delay, has to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood and delay in filing an appeal ought not to be excused unless there are special circumstances. While dealing with an application under section 5 of the Limitation Act, the courts are always influenced by the considerations whether the extension of the period of limitation is likely to affect the rights which have come to vest in the opposite party with the efflux of time. When the time for filing an appeal has once passed, a very valuable right stands accrued in favour of the other party.

8. The law of limitation is founded on public policy. It is enshrined in the legal maxim "*interest reipublicae ut sit finis litium*" i.e. it is for the general welfare that a period of limitation be put to litigation. The Apex court in "***PATHAPATI SUBBA REDDY (DIED) BY L.Rs. & ORS. vs THE SPECIAL DEPUTY COLLECTOR (LA) in SPECIAL LEAVE PETITION (CIVIL) NO. 31248 OF 2018***" has referred "***Maqbul Ahmad and Ors. vs. Onkar Pratap Narain Singh and Ors. A.I.R. 1935 PC 85***, wherein it had been held that the court cannot grant an exemption from limitation on equitable consideration or the ground of hardship. The court has time and again repeated that when a mandatory provision is not complied with and delay is not properly, satisfactorily and convincingly explained, it ought not to condone the delay on sympathetic grounds alone.

9. Thus, an order of acquittal should not be disturbed in appeal under section 378(4) of Cr.P.C. unless it is perverse or unreasonable. There must exist very strong and compelling reasons to interfere with the same.

Findings of fact recorded by a court can be held to be perverse, if the same has been arrived at by ignoring or excluding relevant materials on record or by taking into consideration irrelevant/inadmissible materials or if they are against the weight of evidence or if they suffer from the vice of irrationality.

10. Keeping in view the discussions made hereinabove and the backdrop of facts and circumstances, no cogent case has been made out by the applicant/ appellant for condonation of the delay of 833 days in filing the present appeal.

11. Application stands dismissed.

15.05.2025
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

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