

(2024) 06 SHI CK 0041

High Court Of Himachal Pradesh

Case No: Cr. Revision No. 376 of 2024

Maninder Singh

APPELLANT

Vs

Sangita Devi

RESPONDENT

Date of Decision: June 25, 2024

Acts Referred:

- Limitation Act, 1963 - Section 5
- Code of Criminal Act 1973 - Section 82, 125, 397, 401

Hon'ble Judges: Sandeep Sharma, J

Bench: Single Bench

Advocate: Gurinder Singh Parmar, Ganesh Barowalia

Final Decision: Disposed Off

Judgement

Sandeep Sharma, J

By way of instant application filed under Section 5 of Limitation Act, prayer has been made on behalf of the applicant/ petitioner for condonation of delay in maintaining the accompanying criminal revision, which is barred by limitation.

2. Though, prayer made on behalf of non-applicant-respondent has been opposed on the ground that delay has not been explained properly, however, having carefully perused the averments contained in the application, which is duly supported by an affidavit, this Court finds no impediment in accepting the prayer, especially when, delay caused in maintaining accompanying criminal revision does not appear to be intentional or willful, rather same has occurred on account of circumstances, which were completely beyond the control of the applicant, as such, the same deserves to be condoned.

In view of above, delay of 67 days, which has been otherwise sufficiently explained is condoned. The application is disposed of.

4. Being aggrieved and dissatisfied with order dated 25.09.2023 passed by learned Additional Chief Judicial Magistrate Court No.I, Amb, District Una, H.P., whereby learned court below having taken note of continuous absence of petitioner-respondent in the execution proceedings filed by the respondent-petitioner proceeded to initiate proclamation proceedings under Section 82 Cr.P.C, petitioner-respondent has approached this court in the instant proceedings filed under Section 397 read with Section 401 Cr.P.C, praying therein to set aside the aforesaid order.

5. Having heard learned counsel for the parties and perused material available on record, especially zimini order vis-a-vis reasoning assigned in the impugned order dated 25.09.2023, this court finds no illegality or infirmity in the same and as such, no

interference is called for.

6. Perusal of impugned order clearly reveals that despite service, petitioner-respondent failed to appear in execution proceedings filed by the respondent-petitioner qua execution and implementation of order, whereby she was granted maintenance under Section 125 Cr.P.C. Impugned order further reveals that petitioner-respondent failed to put in appearance despite there being NBWs issued against him and as such, court below had no option, but to initiate proclamation proceedings under Section 82 Cr.P.C. Though, this court finds no illegality or infirmity in the impugned order, but having taken note of statement given by learned counsel for the petitioner that petitioner would remain present before the learned court below on the date fixed by this court, this court deems it fit to grant one opportunity to the petitioner-respondent to cause his presence before the learned court below, enabling it to proceed with the proceedings initiated against the petitioner-respondent under Section 82 Cr.P.C.

7. Consequently, in view of discussion made hereinabove, order dated 25.09.2023 inasmuch as proclamation has been issued against the petitioner-respondent is quashed and set aside with a direction to the petitioner-respondent to cause his presence before the learned court below on 10.07.2024. Needless to say, learned trial court after recording the presence of the petitioner-respondent on the date fixed by this court would proceed with the proceedings under Section 82 Cr.P.C, but in case petitioner expresses intention to pay the amount otherwise sought to be released in the execution proceedings would grant him adequate time. In case petitioner fails to put in appearance on the date fixed by this court, police would be at liberty to arrest the petitioner and cause his presence before the learned court below in proclamation proceedings. However till 10.07.2024, no coercive action against the petitioner-respondent shall be taken pursuant to order dated 25.09.2023, which otherwise would revive automatically, in the event of failure of the petitioner to cause his presence on the date fixed by this court.