

# Avtar Singh vs Government Of Nct Of Delhi on 7 March, 2023

**Author: Anup Jairam Bhambhani**

**Bench: Anup Jairam Bhambhani**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.REV.P. 561/2022 & CRL.M.A.21886/2022

AVTAR SINGH

Through: Mr. Chetan Lokur with  
Chaudhary, Advocates  
in-person.

versus

GOVERNMENT OF NCT OF DELHI

Through: Mr. Tarang Srivastava  
State with SI Deepak  
Sabzi Mandi.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI  
ORDER

% 07.03.2023 In compliance of bailable warrants issued on the last date, the petitioner is present in-person.

2. By way of the present application under section 5 of the Limitation Act 1963 („Limitation Act ), the petitioner seeks condonation of 25 days delay in re-filing the revision petition.

3. For the reasons stated in the application, which is supported by affidavit, the application is allowed.

4. The delay is condoned.

5. Application stands disposed-of.

6. By way of the present application 5 of the Limitation Act, the petitioner seeks condonation of 89 days delay in filing the criminal revision petition.

7. Mr. Chetan Lokur, learned counsel appearing for the petitioner however submits, that in fact there is no delay in filing the revision petition. Mr. Lokur submits that the impugned judgment is dated 30.11.2021 and the revision petition was filed on 26.05.2022; but vide order dated 10.01.2022 made by the Supreme Court in Suo Motu W.P. (C) No. 3/2020 the Supreme Court had directed that limitation shall be held in abeyance from 15.03.2020 to 28.02.2022 by reason of then prevailing pandemic; and had further granted a period of 90 days from 01.03.2022 for filing of any proceedings for which limitation ran-out during the aforesaid period.

8. Mr. Lokur submits, that the limitation for the present revision petition ran-out during that period; and the petition has been filed within the 90 day period provided by the Supreme Court, as reckoned from 01.03.2022.

9. In view of the foregoing, the application is allowed.

10. The application stands disposed-of.

11. The criminal revision petition is taken on Board.

12. By way of the present revision petition filed under sections 397/401 of the Code of Criminal Procedure 1973 („Cr.P.C ) the petitioner impugns judgment dated 30.11.2021 made by the learned Additional Sessions Judge in CrI.A. No.319/2019, whereby the appeal has been dismissed by the learned ASJ on the ground that it was filed with 669 days of delay.

13. By dismissing the appeal, the judgment of conviction dated 23.08.2017 and sentencing order dated 31.08.2017 made by the learned Metropolitan Magistrate in Case No. 299167/2016 has been upheld, convicting the petitioner for offences under sections 420/468/471 of the Indian Penal Code, 1860 („IPC ). It bears mentioning that the petitioner was however released on probation under section 4 of the Probation of Offenders Act, 1958 subject to furnishing a personal bond in the sum of Rs.10,000/- and 01 surety in the like amount.

14. Issue notice.

15. Mr. Tarang Srivastava, learned APP appearing for the State; and accepts notice.

16. Mr. Lokur submits, that though the petitioner was let-off on probation, the conviction stands against his name; and, the petitioner has not been afforded the remedy of even a single appeal on merits from the judgment of conviction. Counsel submits, that though admittedly the criminal appeal was filed with a delay of 669 days, the petitioner/appellant had fully explained the cause for delay, in that, as explained in the application under section 5 of the Limitation Act filed before the learned ASJ, the petitioner had suffered a fall from the stairs causing a serious „slipped disc problem, which resulted in his being under observation and on complete rest for the period between 15.09.2017 and 10.07.2019, during which time he was not even able to walk independently, and was completely dependent on being taken around on a wheelchair.

17. A medical certificate from the orthopaedic surgeon at the Parmarth Mission Hospital, New Delhi to that effect was placed before the learned ASJ; and a copy has also been filed alongwith the present petition.

18. The certificate reads that the petitioner was suffering from "...chronic prolapsed inter-vertebral disc" and was unable to walk properly and was in pain; and that he had even been advised surgery. The certificate further recites that the petitioner was advised rest from 15.09.2017 to 10.07.2019 since the problem kept recurring.

19. Mr. Lokur further points-out, that though the learned ASJ records that she has briefly touched upon the case of the prosecution, the evidence led, the defence set-out and the contentions raised on behalf of the appellant, there is no discussion in the impugned judgment on the merits of the matter, apart from the learned ASJ making a passing observation that there is "...nothing wholly unconscionable warranting interference de hors the bar of limitation, for technicalities cannot be permitted to defeat the course of justice."

20. The learned ASJ further records as follows:

"11. The medical certificate is not sufficient in itself to support the explanation sought to be rendered for such undue and inordinate delay of 699 (sic) days in the absence of medical record of the treatment availed for the relevant period from 15.09.2017 to 10.07.2019. There is no explanation forthcoming for failure to file the medical record for the relevant period. Unless the medical record could demonstrate substantive inability and incapacity for the two years period the medical certificate that the convict was chronic patient of slip disc is not sufficient to condone the delay of two years in filing the present appeal. Right to appeal is an invaluable right in the hands of the convict, and certainly not to be interfered with on technicalities alone lightly, however, the law equally expects the convict to be diligent in availing of the remedy available under the law. The convict was released on probation upon furnishing a bond for six months, the period of bond is long over."

21. The aforesaid observations notwithstanding, it is argued that the appeal was dismissed purely on the ground of it being time-barred.

22. Upon an overall consideration of the facts and circumstances of the case, what prevails with this court is that the petitioner stands convicted for the offences under 420/468/471 IPC, and even though he was let-off on probation, the stigma of his being a convict, stands.

23. Furthermore, as a fundamental tenet of our jurisprudence, a litigant is entitled to at least one appeal on merits. At least one „merits review“ by a superior court of a decision rendered against a litigant, is de rigueur. This principle applies a-fortiori to a person who has faced conviction at the hands of a court.

24. The above position of law has been succinctly expounded by the Supreme Court in State of Maharashtra vs. Sujay Mangesh Poyarekar 1, in which, relying on an earlier judgement, the Supreme Court holds as follows:

"22. In Sita Ram vs. State of U.P. [(1979) 2 SCC 656] this Court held that:

"31. ... A single right of appeal is more or less a universal requirement of the guarantee of life and liberty rooted in the [concept] that men are fallible, that Judges are men and that making assurance doubly sure, before irrevocable deprivation of life or liberty comes to pass, a full-scale re-examination of the (2008) 9 SCC 475 facts and the law is made an integral part of fundamental fairness or procedure."

We are aware and mindful that the above observations were made in connection with an appeal at the instance of the accused. But the principle underlying the above rule lies in the doctrine of human fallibility that "Men are fallible" and "Judges are also men". It is keeping in view the said object that the principle has to be understood and applied."

(emphasis supplied)

25. Evidently however, in the present case, the judgment of conviction rendered by the learned Magistrate has never been reviewed on merits by any superior court, since the criminal appeal was dismissed as being time-barred.

26. In this view of the matter, in the opinion of this court, there is an error in the legality, and in any event in the propriety, of the impugned judgment denying to the petitioner a „merits review of the decision taken by the learned Magistrate purely on ground of limitation.

27. This court is also of the view that the justification offered by the petitioner for the delay in filing the criminal appeal, stands explained, and the certified medical condition of the petitioner was sufficient cause for allowing the application under section 5 of the Limitation Act seeking condonation of delay in filing the criminal appeal.

28. In view of the above, this court is persuaded to set-aside the impugned judgement dated 30.11.2021, with a direction that the criminal appeal shall stand remanded to the learned ASJ, to be decided afresh on merits, in accordance with law.

29. The criminal appeal shall be listed before the learned Sessions Court on 05.04.2023, on which date the petitioner shall appear before that court.

30. Petition stands disposed-of in the above terms.

31. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J MARCH 7, 2023 ds