

Himachal Pradesh High Court

Kamla Devi vs Raj Kumar And Another on 8 September, 2025

Kamla Devi versus Raj Kumar and another Cr. M.P. (M) No.1210 of 2023 08.09.2025
Present: Mr. Ashok Kumar Tyagi, Advocate, for the applicant/appellant.

Mr. Divya Raj Singh, Advocate, for the respondents.

The applicant/appellant has filed the present application to seek condonation of 403 days' delay in filing the appeal. It has been asserted that the applicant/victim found out about the judgment in February 2023. She applied for the copy on 09.02.2023, which was attested on 14.02.2023 and was delivered on 22.02.2023. The applicant consulted the matter with her lawyer, who advised her to file an appeal. She visited Shimla on 16.03.2023 with a copy of the judgment. She was advised to bring the complete documents. She applied for the copies of statements of witnesses, which were attested on 23.03.2023. She received the copies on 17.04.2023 and delivered them to her counsel at Shimla on 19.04.2023. The delay in filing the appeal is not intentional but due to the circumstances beyond the applicant's control. Hence, the application.

2. The respondents opposed the application by asserting that the application is not maintainable and a valuable right has accrued to the respondents which cannot be taken away on flimsy averments. The applicant has not mentioned how she came to know about the passing of the judgment in February 2023 when the judgment was passed on 07.03.2022. The applicant explained the delay after February 2023, and she has not provided any explanation for the delay w.e.f. March 2022.

The applicant was aware of the decision of the case. She had filed an application under Section 156(3) of Cr.P.C., which led to the registration of the F.I.R. The present application is an abuse of the process of the Court.

Therefore, it was prayed that the application be dismissed.

3. Rejoinder denying the contents of the reply and affirming those of the application that was filed.

4. I have heard Mr. Ashok Kumar Tyagi, learned counsel for the applicant and Mr. Divya Raj Singh, learned counsel for the respondents.

5. Mr. Ashok Kumar Tyagi, learned counsel for the applicant, submitted that the applicant was not aware of the decision of the learned Trial Court. She came to know about the decision in February 2023, after which she r to obtained the copies and contacted her counsel, who advised her to obtain the complete record. Some time was spent in obtaining the complete record. The delay occurred due to circumstances beyond the applicant's control.

Therefore, he prayed that the present application be allowed and the delay in filing the appeal be condoned.

6. Mr. Divya Raj Singh, learned counsel for the respondents, submitted that the applicant has failed to assign any sufficient cause for the condonation of the delay. She has mentioned the reasons for the delay which occurred after February 2023, but has not given any reason for the delay from the delivery of the judgment. The delay beyond six months cannot be condoned as per the proviso to Section 14A (3) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. (SC & ST Act).

Therefore, he prayed that the present application be dismissed.

7. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

8. Proviso to Section 14(A)(3) of the SC&ST Act specifies a maximum period of 180 days for filing the appeal. This provision was quashed by the Allahabad High Court in Re: Provision of Section 14 (a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (2018) 6 ALJ 631. It was held by a Division Bench of Allahabad High Court in Ghulam Rasool Khan v. State of U.P., 2022 SCC OnLine All 975 that no limitation applies to an appeal after the quashing of the proviso to Sub Section 3 of Section 14A of the SC & ST Act. It was observed:

15. In the earlier Full Bench of this Court in In Re:

Provision of Section 14 (a) of SC/ST (Prevention of Atrocities) Amendment Act, 2015 (supra), one of the questions considered was with regard to validity of second proviso to sub-section(3) of Section 14A of the 1989 Act, which provides limitation for condonation of delay in filing appeals under Section 14A of the aforesaid Act. The aforesaid proviso was held to be ultra vires. The relevant paragraphs are extracted below:--

"55.It has left an aggrieved person without of remedy of even a first appeal against any judgment, sentence or order passed under the 1989 Act on the expiry of 180 days. As we contemplate the fatal consequences which would visit an aggrieved r person on the expiry of 180 days, we shudder at the deleterious impact that it would have and find ourselves unable to sustain the second proviso, which must necessarily be struck down, as we do, being in violation of Articles 14 and 21 of the Constitution.

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62. While we reject the challenge to section 14A (2), we declare that the second proviso to Section 14A (3) is violative of Articles 14 and 21 of the Constitution and it is consequently struck down."

16. The second proviso to sub-section(3) of Section 14A of the 1989 Act having been struck down by this Court in In Re: Provision of Section 14 (a) of SC/ST (Prevention of Atrocities) Amendment Act, 2015 (supra), there will be no limitation to file an appeal

against an order under the provisions of 1989 Act. Hence, the remedies can be availed of as provided.

17. In view of our aforesaid discussions, the answers to the questions referred are as under:--

(i) Question No. (I) is answered in the negative as Rohit v. State of U.P., (2017) 6 ALJ 754 has been overruled by a Full Bench of this Court in In Re: Provision of section 14 (a) of SC/ST (Prevention of Atrocities) Amendment Act, 2015, (2018) 6 ALJ 631.

(ii) Question No. (II) is answered in the negative, holding that an aggrieved person will not have two remedies, namely, i.e. filing an appeal under Section 14A of the 1989 Act as well as filing a bail application in terms of Section 439 Cr. P.C.

(iii) Question No. (III) is answered in the negative, holding that the aggrieved person, having a remedy of appeal under Section 14A of the 1989 Act, cannot be allowed to invoke the inherent jurisdiction of this Court under Section 482 Cr. P.C.

(iv) Question No. (IV) - There will be no limitation to file an appeal against an order under the provisions of the 1989 Act. Hence, the remedies can be availed of as provided.

9. It was held by Jharkhand High Court in Pawan Kumar Dokania v. State of Jharkhand, 2024 SCC OnLine Jhar 3500 that once the provision of statute has been struck down by a High Court, it will have effect throughout India to which the Act applies; hence, there will be no limitation for filing the appeal. It was observed:

"13. Second proviso of Section 14-A (3) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been struck down being in violation of Articles 14 and 21 of the Constitution by a Full Bench of Hon'ble Allahabad High Court in In Re: Provision of Section 14-(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 reported in 2018 SCC OnLine All 2087 and in .

view of the judgment of Hon'ble Supreme Court in the case of Kusum Ingots & Alloys Limited v. Union of India, (2004) 6 SCC 254, paragraph 22 of which reads as under:

"22. The Court must have the requisite territorial jurisdiction. An order passed on a writ petition questioning the constitutionality of a parliamentary Act, whether interim or final, keeping in view the provisions contained in clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India, subject, of course, to the applicability of the Act."

14. In view of the above striking down of the second proviso of Section 14-A (3) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 shall have effects throughout the territory of India to which the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is applicable, including the State of Jharkhand. Hence, the objection raised by the Stamp Reporter is overruled."

10. Therefore, the submission that the appeal has to be filed within 180 days and cannot be filed beyond that period is not acceptable.

11. The applicant asserted in her application, duly supported by an affidavit, that she came to know about the decision in February 2023. The copy of the judgment passed by the learned Trial Court shows that the State was prosecuting the matter before the learned Trial Court. The .

attendance of the applicant or her counsel was not marked.

Thus, the plea that the applicant was unaware of the decision of the case has to be accepted as correct. Since the applicant did not know about the passing of the judgment, r to therefore, she could not have filed an appeal and had a reasonable cause for not filing the application within the limitation.

12. In view of the above, the present application is allowed, and 403 days' delay in filing the appeal is ordered to be condoned. The present application stands disposed of.

Cr. Appeal. No. _____ 2025.

Be registered.

Notice. Mr. Divya Raj Singh, Advocate, appears and waives service of notice on behalf of the respondents.

The record be requisitioned, and the matter is to be listed thereafter. A copy of the appeal be supplied to the learned counsel for the respondents.

(Rakesh Kainthla) 08 September, 2025 th (y.s)

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