

**IN THE HIGH COURT OF HIMACHAL PRADESH,  
SHIMLA**

**Cr.MP(M) No. 972 of 2018.**

**Reserved on: 23<sup>rd</sup> August, 2019.**

**Decided on: 30<sup>th</sup> August, 2019.**

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Anup Sharma

.....**Petitioner.**

**Versus**

Moti Lal

.....**Respondent.**

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**Coram**

**The Hon'ble Mr. Justice Sureshwar Thakur, Judge.**

Whether approved for reporting?

**For the Petitioner:** Mr. H.R. Jhingta, Advocate.

**For the Respondent:** Mr. B.N. Sharma, Advocate.

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**Sureshwar Thakur, Judge.**

Through, the instant application, cast under the provisions of Section 5 of the Limitation Act, the petitioner/applicant, hence, seeks pronouncement, of, an affirmative order thereon. Upon, the, pleadings of the contesting litigants, this Court had formulated, the, hereinafter extracted issues:-

1. Whether the delay in filing the present appeal is sufficiently explicated? OPA.
2. Final Order.

2. For the reasons to be recorded hereinafter, my findings upon the afore issues are as under:-

Issue No.1.....No.

2. Final Order...Petition dismissed as per the operative portion of the order.

**Issue No.1.**

3. The petitioner, for adducing cogent discharging evidence, vis-a-vis, the afore issue, hence, stepped into the witness box, and, in his examination-in-chief, he has made echoings, qua immediately, upon, a verdict, being pronounced, upon, case No.6-3 of 2011, by the learned Chief Judicial Magistrate concerned, (a) his counsel, applying, for, the certified copy, of, the afore verdict, (b) and, he has further made echoings, qua, his counsel not advising him, to cast a challenge, vis-a-vis, the verdict, of, acquittal pronounced, upon, one Moti Lal, (c) and, hence he has ascribed the afore reason, for, the delay being occasioned, in, the filing, of, the instant appeal, before this Court. However, during, the course of, his, cross-examination, he acquiesces, to a suggestion meted to him, qua, the, order of acquittal pronounced, upon, the accused Moti Lal, being a sequel, of, his settling the dispute with co-accused Moti Lal, and, hence his not casting any

challenge thereto. The effect thereof, when combined with the echoings, made in his examination-in-chief, qua, for want of his counsel, not meteing proper guidance to him, hence, his not casting within time, any challenge to the verdict of acquittal pronounced, upon, accused Moti Lal, (d) obviously mobilises, an, inference qua the delay in the institution, of, the extant appeal, being both deliberate or intentional, and, also it being a mere contrivance, for, untenably, undoing, the, verdict of acquittal pronounced, upon, Moti Lal, (e) emphatically, when the afore verdict of acquittal, was a sequel, of the petitioner herein, acquiescing qua his amicably settling, the, dispute with the afore Moti Lal. Consequently, afore issue No.1 is answered in the favour of the respondent, and, against the petitioner.

**Final Order.**

4. For the foregoing reasons, there is no merit in the instant petition, and, it is dismissed accordingly. No costs.

**30<sup>th</sup> August, 2019.**  
(jai)

**(Sureshwar Thakur)**  
**Judge.**