

Neutral Citation No. - 2024:AHC-LKO:62684**Court No. - 16**

Case :- APPLICATION U/S 378 DEFECTIVE No. - 99 of 2023

Applicant :- Meena Devi

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Lko. And 4 Others

Counsel for Applicant :- Nripendra Mishra,Ram Sahay Yadav

Counsel for Opposite Party :- G.A.,Sheo Shankar Verma

Hon'ble Shamim Ahmed,J.

(C.M.Application No. 99/A378A/2023)

1. The case is taken up in the revised call.
2. This is an application for condonation of delay in filing the appeal under Section 378 (4) Cr.P.C.
3. The Stamp Reporter has reported that this appeal is beyond time by 61 days.
4. Heard Sri Nipendra Mishra, learned counsel for the appellant and Sri Ashok Kumar Singh, learned A.G.A.-1 for the State and Sri Sheo Shankar Verma, learned counsel for the opposite party Nos.2 to 5 and perused the material available on record.
5. The reason shown in the affidavit filed in support of the application for condonation of delay is sufficient and convincing.
6. The application of condonation of delay is allowed.
7. Delay in filing the appeal is hereby condoned.
8. Office is directed to allot regular number.

Order Date :- 10.09.2024

Arvind

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1. The case is taken up in the revised call.
2. Heard Sri Nipendra Mishra, learned counsel for the appellant and Sri Ashok Kumar Singh, learned A.G.A.-1 for the State and Sri S.C.Verma, learned counsel for the opposite party Nos.2 to 5 and perused the material available on record.
3. The present leave to appeal under Section 378 (4) Cr.P.C. has been filed against the judgment and order dated 21.03.2023 passed by the Court of Civil Judge (J.D.) Judicial Magistrate Shrawasti in Complaint Case No. 438 of 2016: Meena Devi Vs. Budheswar Prasad and other, acquitting the opposite party Nos. 2 to 5 from the charges framed against them.
4. The brief facts of the case are that grandfather of husband of the appellant, namely, Paltan had expired 15 years ago and the appellant is the sole legal heir. The wife of Paltan has also expired and he had no son. Respondent No. 2, Bodheshwar Prasad got executed a forged will dated 15.05.1999 and fraudulently by misleading the court mutated the name his wife, Archana Devi in the revenue record. The case is pending in the Court of Sub-Divisional Magistrate, Bhinga (Complaint No. 438/2016). On 26.06.2016, the respondents entered in to the appellant's house, assaulted her and her husband, and torn her clothes leaving her naked.

5. I have heard the rival submissions advanced by the learned counsel for the appellant as well as by learned counsel for the opposite party Nos. 2 to 5 and the learned A.G.A.-I for the State-opposite party No. 1 and gone through the judgment passed by the trial court.

6. In the present case the trial court thoroughly examined the case, considering both the plaintiff's evidence and witness testimonies. The case involved allegations under sections 323, 504, 506, and 452 of the Indian Penal Code, with the plaintiff, Meena Devi, accusing the defendants—Bodheshwar Prasad, Sarangdhar, Puran, and Ramphal—of assaulting her and her husband. The plaintiff presented her statement under Section 244 of the CrPC, along with the testimonies of PW-1 Nanke and PW-2 Ram Samujh.

7. Upon review, the trial court found significant contradictions in the witness statements. The plaintiff initially claimed the incident occurred inside her house but later changed her stance, saying it happened at her doorstep. Witness Nanke contradicted the plaintiff, stating the incident occurred in Udaipur, where the accused live, while the plaintiff maintained that it happened in her own village, Lalipurwa. Furthermore, Nanke admitted during cross-examination that his testimony was based on what Meena Devi told him, making his presence at the scene doubtful.

8. Similarly, witness Ram Samujh's testimony was inconsistent. He initially claimed the incident occurred in Udaipurwa but later shifted his statement to say it happened in Lalipurwa, creating further contradictions regarding the location of the incident.

9. The court concluded that the contradictions in the witness testimonies, particularly concerning the location of the incident, rendered the case doubtful. The statements lacked coherence and credibility, with witnesses providing conflicting accounts. As a result, the trial court dismissed the case, finding no conclusive evidence to support the plaintiff's claims.

10. The trial court after taking into consideration the facts and circumstances of the case and evidence available on record, passed the judgment and order of acquittal dated 21.03.2023.

11. Learned counsel for the appellant submits that the trial court did not appreciate the evidence on record. He further submits that prosecution has successfully proved the offence against the accused on the basis of evidence. The judgment was passed without considering the statement of witnesses and the case set up by the prosecution and was passed on surmises and conjectures.

12. Further, learned counsel for the appellant could not point out any illegality or infirmity in the judgment and order of acquittal passed in favour of opposite parties which is before this Court.

13. Learned A.G.A.-I and learned counsel for the opposite party Nos. 2 to 5 submit that there appears no illegality or infirmity in the judgment and order of acquittal passed by the trial court, therefore, leave to appeal may be refused.

14. Further, this Court observed that an appeal against acquittal stands on a different footing from the appeal against conviction. Hon'ble the Apex Court in a very recent judgment in the case of **Sadhu Saran Singh Vs. State of Uttar Pradesh and Others reported in (2016) 4 SCC 357** has considered this difference and has observed in paragraph nos.20 and 21 as under:

"20. Generally, an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against conviction. In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate court would interfere with the order of acquittal only when there is perversity of fact and law. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. This Court, while enunciating the principles with regard to the scope of powers of the appellate court in an

*appeal against acquittal, in **Sambasiva V. State of Kerala 1998 SCC (Cri) 1320** has held:*

"7. The principles with regard to the scope of the powers of the appellate court in an appeal against acquittal, are well settled. The powers of the appellate court in an appeal against acquittal are no less than in an appeal against conviction. But where on the basis of evidence on record two views are reasonably possible the appellate court cannot substitute its view in the place of that of the trial court. It is only when the approach of the trial in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate court can interfere with the order of acquittal."

21. The Court, in several cases, has taken the consistent view that the appellate court, while dealing with an appeal against acquittal, has no absolute restriction in law to review and relook the entire evidence on which the order of acquittal is founded. If the appellate court, on scrutiny, finds that the decision of the court below is based on erroneous views and against settled position of law, then the interference of the appellate court with such an order is imperative."

15. In the light of the aforesaid guidelines, the impugned judgment has to be considered from the point of view whether the view taken by the trial court was a probable view based on the material on record or it is an absolutely erroneous judgment devoid of merits.

16. A criminal trial proceeds with the presumption of innocence of the accused persons. With the acquittal of the accused persons this presumption of innocence stands fortified. So very strong and cogent reasons must exist in interfering the judgment of acquittal.

17. Keeping in view the aforesaid weakness of the prosecution case, as noted by the trial court, I am of the view that the view taken by the trial court was a probable and logical view, which is based on valid reasons. The judgment of the court below cannot be said to be illegal, illogical and improbable and not based on material on record or is based on erroneous views and is against the settled position of law. So, this Court is satisfied that there is absolutely no hope of success in this appeal and accordingly, no interference is called for.

18. Leave to appeal is refused.

19. Application for leave to appeal is **rejected**.

20. Accordingly, the appeal does not survive, and in view of above, the appeal is also **dismissed**.

Order Date :- 10.09.2024

Arvind