

In the High Court of Punjab and Haryana at Chandigarh

Crl. Misc. No. A-960-MA of 2013

Date of Decision: 19.01.2015.

Kartar Singh

.....Applicant

Versus

Gurdial Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Ashok Bhardwaj, Advocate
for the applicant.

SABINA, J.

Respondents had faced trial in a complaint filed by the applicant under Section 452, 323, 341, 354, 506/34 of the Indian Penal Code, 1860 ('IPC' for short).

Case of the complainant, in brief, was that on 25.4.2010, at about 8.30 A.M., complainant was sitting in front of his house along with Balbir Singh and Mela Singh. Accused Zora Singh came there. Complainant told accused Zora Singh that he had withdrawn his nomination papers as he feared that he would face defeat in panchayat elections. Accused Zora Singh felt offended and after sometime, all the three accused entered the house of the complainant. At the instance of accused Zora Singh, accused Jeevan Singh caught hold of the complainant and accused Gurdial Singh slapped the complainant and also pulled his beard.

In support of his case, complainant led his preliminary evidence.

Accused were summoned to face the trial qua

commission of offence punishable under Section 452, 323, 506, 34 IPC. Thereafter, applicant led his pre-charge evidence. Charge was framed against the accused under Section 323, 506(ii) IPC.

Thereafter, complainant appeared in the witness box as CW-1 and examined Mela Singh as CW-2, Balbir Singh as CW-3 and Balbir Kaur as CW-4.

Trial Court vide order dated 17.10.2012 ordered the acquittal of the respondents. Hence, the present application under Section 378(4) of the Code of Criminal Procedure, 1973 praying for leave to appeal by the applicant-complainant.

Trial Court while ordering the acquittal of the respondents held that there was inordinate delay in filing the complaint. The occurrence had allegedly taken place on 25.4.2010 whereas the complaint had been filed on 3.6.2010. Although, the case of the complainant was that he had reported the matter to the police but no such evidence was led by the complainant on record. No record was proved on record to the effect that complainant had approached the police qua the occurrence in question. Thus, in the present case, the Trial Court had rightly ordered the acquittal of the respondents as there was unexplained delay in filing the complaint.

Learned counsel for the applicant has failed to point out any misreading of evidence by the Trial Court which would warrant interference by this Court. The reasons given by the Trial Court while ordering the acquittal of the respondents, are sound reasons and call for no interference.

Their lordships of the Supreme Court in **Allarakhia K. Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748**, held that where, in a case, two views are possible, the one which favours

the accused, has to be adopted by the Court.

A Division Bench of this Court in **State of Punjab v. Hansa Singh, 2001 (1) RCR (Criminal) 775**, while dealing with an appeal against acquittal, has opined as under:

“We are of the opinion that the matter would have to be examined in the light of the observations of the Hon'ble Supreme Court in *Ashok Kumar v. State of Rajasthan*, 1991(1) SCC 166, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.”

To the same effect is the ratio of the judgments of the Supreme Court in **State of Goa v. Sanjay Thakran (2007) 3 SCC 755** and in **Chandrappa v. State of Karnataka, (2007) 4 SCC 415**.

Similarly, in **Mrinal Das & others v. The State of Tripura, 2011 (9) Supreme Court Cases 479**, the Supreme Court, after looking into various judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

“8) It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and

review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons", for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial

Court depending on the materials placed”

No ground is made out to grant leave to file an appeal.

Accordingly, this application is dismissed.

**(SABINA)
JUDGE**

**January 19, 2015
Gurpreet**