

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A-1069-MA of 2015 (O&M)

Date of decision: 01.12.2015

Mahender Singh

...Applicant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Yash Paul Khullar, Advocate for the applicant.

Jitendra Chauhan, J. (Oral)

CRM-20762-63-2015

Heard. There is a delay of 392 days in filing the present appeal. The applicant has sought condonation of delay. The applicant had filed Criminal complaint No. 37 of 2014 on 01.05.2014 before Addl. Sessions Judge, Palwal, which was dismissed on 09.03.2015, being not maintainable. This appeal was filed on 29.05.2015. So, keeping in view the fact that the applicant filed appeal before Addl. Sessions Judge on wrong advice of counsel, the delay of 392 days in filing the appeal is condoned.

Main Case

By filing the present petition, under Section 378(4) of the Code of Criminal Procedure (for short 'Cr.P.C.'), the applicant has assailed the judgment dated 19.03.2014, passed by the Judicial Magistrate 1st Class, Palwal, dismissing the complaint and acquitting the accused therein of the charges framed against them under Sections 323, 452 and 34 of the Indian Penal Code (for short 'IPC').

On behalf of the applicant, it is contended that the learned trial Court dismissed the complaint of the applicant without appreciating the fact that the respondents/accused No.2 to 5 committed trespass and caused hurt to the applicant. The matter was reported to the police, however no action was taken. The contents of the complaint were duly proved before the learned trial Court resulting into charge sheeting of respondents No.2 to 5 for the alleged offences. The applicant and CW-2 his brother, Bachu had duly corroborated the incident in post-charge evidence before the trial Court. However, the trial Court has not taken into consideration the factual aspect of the matter.

Heard.

The learned Judicial Magistrate has recorded that a

lot of doubt exists in the mind of the Court regarding the alleged incident and regarding the genuineness of the version of the applicant. The alleged incident had taken place on 21.12.2008 whereas the complaint was filed on 11.02.2009. The applicant got himself medically examined on the same day i.e. 21.12.2008. The brother of the applicant, CW-2 Bachu, had duly admitted in his cross examination that several litigation is pending between them and accused Lekhi. He also admitted their conviction under Section 325 IPC. He further stated that at the time of alleged attack no one came except Udham and Nafe Singh, whereas as per version of CW1, the applicant, a lot of people gathered at the spot. Said, Udham Singh was also not examined by the applicant. Furthermore, the applicant himself had admitted in his cross examination that the present complaint was filed by him after filing of case by the accused Lekhi. No independent/eye witness has been produced to substantiate the allegations levelled by him in his complaint. In the absence of any strong evidence, it is highly improbable that the applicant had actually received hurt at the hands of the private respondents.

In the circumstances, the finding of acquittal recorded by the trial Court cannot be said to be perverse or contrary to the

material on record. In fact there is no infirmity in the reasoning assigned by the trial Court for acquitting the accused/respondents. It is a settled law as has been held in C. Antony Vs. K.G. Raghavan Nair, 2002(4) RCR (Criminal) 750 that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

Accordingly, the leave to appeal stands declined.

Dismissed.

01.12.2015

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(JITENDRA CHAUHAN)
JUDGE