

209 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH

CRM-A-1042-MA of 2014 (O&M)
DECIDED ON: APRIL 11, 2016

TRIPTA MEHRA

.....APPLICANT

VERSUS

VIJAY KAPOOR AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Harchand Singh Batth, Advocate
 for the applicant.

JASPAL SINGH, J

CRM No. 19909 of 2014

In view of averments made in the application, the same is allowed and delay of 48 days in filing the instant application is condoned.

CRM-A-1042-MA of 2014

Instant application has been preferred by Tripta Mehra feeling aggrieved against the judgment dated January 20, 2014 passed by Judicial Magistrate Ist Class, Amritsar, whereby, complaint under Sections 452, 323, 324, 506, 419, 420, 148, 149 and 447 IPC filed by her was dismissed and

respondents have been discharged of the offences under which they were summoned in the complaint.

2. The contention of learned counsel for the applicant is that non-application of judicial mind to the facts and circumstances of the case in hand as well as mis-appreciation of evidence brought on record by the applicant have resulted into miscarriage of justice. In fact, in the instant case the ingredients which constitute offence under Sections 420, 452, 323, 506, 148 and 149 IPC have been fully established and the evidence so brought on record by the applicant if unrebutted is sufficient to warrant the conviction of the respondents. Thus, respondents should have been charge-sheeted by learned trial Court. The minor discrepancy and contradiction in the statements of witnesses have been made the ground for discharge of respondents by learned trial Court. It is well settled proposition of law that it is quite natural that some minor contradictions are likely to emerge in the statements of witnesses especially, when they are examined after a long span of time. Moreover, learned trial Court has also ignored the testimony of Dr. Rajesh Kumar, Senior Resident, Guru Nanak Dev Hospital, Amritsar, who has categorically deposed that on December 11, 2015 patient Avtar Singh was admitted in the emergency and he subjected him to x-ray examination and gave treatment to him. The x-ray examination of the injuries appearing on the person of Avtar Singh disclosed the fracture on his right lower and radius but the medical examination of injured Avtar Singh has been discarded and disbelieved by learned Magistrate without no rhyme and reason. Moreover, at the time of framing of charge, the minor discrepancies and contradictions appearing in the statements of witnesses cannot be made the

basis, especially when respondents would not have an opportunity to further cross-examine them after the framing of charge. Thus, the impugned judgment is not sustainable in the eyes of law and is liable to be set aside by way of acceptance of instant application.

3. This Court has given a deep thought to the afore-said submissions made by learned counsel for the applicant but does not find any legal and factual substance in the submissions made by him.

4. The entire evidence brought on record by complainant/applicant has been taken into consideration by learned trial Court and after thoroughly scrutinizing the same, the trial Court has come to the conclusion that none of offences complained of by the applicant is made out.

5. Here, it would be pertinent to mention that during the pendency of complaint before the learned trial Court claim of both the parties was satisfied meaning thereby, that there was no dispute between the parties and if there was any dispute, that is of civil nature and the Civil Court is already seisin of the matter. The complaint appears to have been filed just to give a criminal colour to the litigation for the reasons best known to the applicant. So, in such a situation there is a double presumption of innocence in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court. The law in this context is clear. The court is only required to

interfere with the order of discharge or acquittal when there are substantial or compelling reasons. At the same time, it is also settled by now through various pronouncements that if two reasonable conclusions are possible on the basis of evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial Court. In the case in hand, this Court is of the considered view that there is no substantial or compelling reasons to interfere with the impugned order of discharge. Rather, it can be said that the same is well reasoned one.

6. In the light of what has been discussed above, this Court does not find any merit in the instant application. As such, the same is dismissed whereby, the impugned order is upheld.

APRIL 11, 2016
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(JASPAL SINGH)
JUDGE