

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

CRM-A-636-MA of 2015 (O&M)

Date of decision: 07.11.2016

Union of India

...Applicant

Versus

Sant Ram and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Nitin Kumar, Advocate for the applicant.

Jitendra Chauhan, J. (Oral)

CRM-11702-2015

The learned counsel for the applicant refers to Section 378 (5) of Cr.P.C., which provides that wherein the complaint is a public servant, the period of limitation is six months, therefore, he states that the instant application was filed inadvertently. He seeks permission to withdraw the same.

Dismissed as withdrawn.

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 sought special leave to appeal to assail the judgment dated 29.10.2014, passed by Judicial Magistrate 1st Class, Kurukshetra, whereby the accused (respondents) herein have been acquitted in FIR No.5 dated 11.02.2011,

registered under Section 3 Railway Property (Unlawful Possession) Act, 1966 (for short 'the Act'), at PS RPF, Kurukshetra.

It is contended by learned counsel for the applicant that the impugned judgment dated 29.10.2014, passed by learned trial Court is totally unjustified and unsustainable in the eyes of law despite there being cogent and convincing evidence led by the prosecution. In the instant case, three bundles of OHE wire/one gunny plastic bag were recovered from the possession of accused/respondents, however, the learned Court erred in not considering the evidence on record. The complaint was moved in the year 2011, whereas the depositions of the witnesses were recorded in the year 2014 and it is difficult to remember sequence wise circumstance to narrate before the Court. He further states that CT Veerbhan and SI Rajbir Singh have specifically deposed that the accused/respondents were apprehended on spot while they were carrying cooper wire in gunny bag.

Heard.

The stand taken by the applicant is that the accused/respondents have stolen the railway property and they were caught red handed and were found in possession of some plastic bags. As per testimony of PW-1, Head Constable Vir Bhan, Raj Kumar from Railway Department was called through phone and he identified the property, whereas, in his cross examination, he stated that Raj Kumar was called when the recovery has already been effected and loaded on rickshaw and took it to the police station. Further said Raj Kumar had

admitted that respondent No.1 was not related to store in the manner, even being the employee of railway. He further admitted that no case number was written on the case property and seal was also broken. Even there was no stamp on the case property which established the it belong to Railway Department. Furthermore, PW-3, Raj Kumar in his testimony had stated that on 28.01.2011, he was posted at Railway Station, Kurukshetra, when scrap ledger was sent through respondent No.2. On cross checking, it came into the notice that copper wire which was also in the scrap material found missing and when he asked respondent No.2, he admitted that he has sold it for his benefit. The version of the complaint is altogether different as stand taken by the prosecution witnesses. There were material discrepancies in the testimony of the witnesses, leading to the acquittal of accused/respondents. Thus, the applicant has failed to discharge the onus upon the respondents.

In these 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/respondent. 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. This Court finds no merit in the instant petition.

Accordingly, the special leave to appeal stands declined on account of delay as well as on merit.

Dismissed.

07.11.2016

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes	No
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Whether Reportable:	Yes	No
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