

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

CRM-A-642-MA-2015 (O&M)

Date of decision : 03.08.2016

Hansraj

...Appellant

Versus

Attar Singh and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Sumit Sangwan, Advocate for the applicant-appellant.

JITENDRA CHAUHAN, J. (Oral)

This special leave to appeal is directed against the impugned judgment dated 05.11.2014 passed by the learned Judicial Magistrate First Class, Bhiwani, whereby the accused-respondents were acquitted of the charges framed against them under Sections 148, 440, 447, 427, 323, 452, 506, 201 and 379 of the Indian Penal Code (for short 'the IPC') read with Section 149 IPC.

The learned counsel contends that the learned trial Court in not considering the statements of the appellant and eye-witnesses, namely, Gian Chand and Raj Kumari passed the impugned judgment, whereby acquitting the respondents, as the alleged incident of illegal and forcible entrance in the house of the appellant by the respondents with an intention to cause injury to him; of demolition of a wall; and of theft of all the material and bricks, was established.

Along with special leave to appeal, the applicant-appellant has filed CRM-11706-2015, seeking condonation of delay of 30 days in filing the special leave petition on the grounds mentioned in the application.

The plea of applicant-appellant appears to be afterthought as he had already been informed about the limitation period i.e.90 days. He could have made an alternative arrangement if the present learned counsel was not available owing to winter vacation. Under these circumstances, no case is made out for condonation of delay in filing the present appeal.

Dismissed.

Even on merits, the applicant-appellant has no case at all.

I have heard the learned counsel and perused the entire record on file.

As per the case of the petitioner, on 16.06.2007 at about 10.00 a.m., the respondents had forcibly entered into his plot and demolished the wall and removed all the bricks and other material from there to clear the evidence. However, as per the version of Gyan Chand, the mason, he came for work at the place of occurrence at 8.00 a.m., found nothing there and thus, went back to his home, which depicts the contradiction about the timing of occurrence and also makes his presence doubtful as the appellant had deposed that on the day of alleged occurrence, the construction was still going on. Further, the stand of the appellant is belied by the material contradictions arising from the statement of Raj Kumari, wherein she had not stated that the bricks were taken away by the respondents or that the

construction was going on or not.

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.

Keeping in view the above, 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 respondents. This Court feels that learned Judicial Magistrate Ist Class, Bhiwani, has passed the impugned judgment dated 05.11.2014 after appreciating the facts and circumstances of the present case and no other view is possible.

Accordingly, the special leave to appeal is declined.

Dismissed on merits as well as being time barred.

03.08.2016

ashok

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No