IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Revision No.1604 of 2015 (O&M)
Date of Dec`ision: 26.02.2016

Umesh Mehra

...Petitioner(s)

Versus

State of Punjab & another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

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

Present:- Ms. Puja Chopra, Advocate
for the petitioner.
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HARI PAL VERMA J.(Oral)

CRM-14698-2015:

This is an application under Section 5 of the Limitation Act, 1963 (for short, the Act) seeking condonation of delay of 748 days in filing the present criminal revision petition.

Learned counsel for the applicant-petitioner contends that respondent no.2 misappropriated Rs.2.25 lac entrusted to him in cash and also illegally detained goods worth Rs.9,36,360/-. On registration of FIR against him, though Rs.1 lac was returned by him, but he did not return the remaining amount of Rs.1.25 lacs as well as the goods worth Rs.9,36,360/-. Subsequently also, respondent-accused again compromised the matter and assured the petitioner to return back the aforesaid amount and goods and therefore, the petitioner did not pursue the instant case much diligently. However, the impugned judgments have been passed, acquitting him of the charge framed against him. It has been further pleaded that the petitioner had tried to resolve the dispute amicably with the help of respectables, but to no effect and thereby, the aforesaid delay has occurred.

Admittedly, respondent no.2 has filed a suit for damages as well as criminal complaint for defamation against the petitioner and the petitioner has also filed a suit for recovery of Rs.1.25 lacs which are also pending and therefore, the plea of the petitioner that the matter was being amicably settled is not believable. Moreover, the impugned judgment has been passed on 21.12.2012 whereas the applicant-petitioner has filed the instant revision petition on 5.4.2015 and therefore, the delay of 748 days in filing the present revision petition is inordinate one and the petitioner has not been able to sufficiently explain the same. Thus, the present application does not fulfil the requirement of law as laid down under Section 5 of the Act.

In these circumstances, there is no merit in the present application and the same is, consequently, dismissed.

Main Case:

Though after dismissal of the application under Section 5 of the Act, the present petition is not required to be discussed elaborately, but still for just and fair decision of the matter, the revision petition is being decided on merits as well.

Petitioner-complainant has filed the present revision petition against judgment dated 21.12.2012 passed by learned Additional Sessions Judge, Jalandhar, whereby his appeal against the judgment of acquittal dated 23.12.2011 passed by learned Additional Chief Judicial Magistrate, Jalandhar was dismissed. Vide order dated 23.12.2011, learned Magistrate while giving the benefit of doubt to the respondent acquitted him of the charge framed under Section 408 IPC.

Briefly stated, the petitioner-complainant lodged FIR No.1 dated 1.1.2010 under Sections 420, 408 IPC at Police Station Sadar, Jalandhar against respondent no.2-accused, alleging fraud of Rs.1,25,000/- and illegal detention of goods worth Rs.9,36,360/-. It has been alleged that M/s Krishna Enterprises was having its office at G.T. Road, Jalandhar and stock point at Amritsar. Respondent no.2-accused was employed as dispatch-cum-runner boy in their group company of Rajpura godown. He collected a sum of Rs.2,25,000/- from their Jalandhar office on 28.12.2009 for the purpose of paying the same to M/s Delcray Cables Private Limited, one of their party at Rajpura. However, instead of paying the said amount to M/s Delcray Cables Private Limited, respondent no.2-accused kept the same with him and refused to return it to the complainant for unknown reasons and rather he threatened the owner of their company with dire consequences in case he was again asked to return the amount of Rs.2,25,000/-. Thereafter, some amicable settlement was arrived at between the parties, whereby the accused promised to pay back the said amount and also assured to release goods worth Rs.9,36,360/- which were illegally detained by him. Though M/s Delcray Cables Private Limited confirmed receipt of Rs.1 lac on 30.12.2009, but when they went to the respondent-accused for recovery of balance amount of Rs.1,25,000/- and goods, he threatened them with dire consequences and did not return the balance money as well as goods. In order to prove its case, the prosecution examined as many as four witnesses namely PW-1 HC Gurdev Singh, PW-2 SI Inderpal Singh, Investigating Officer, PW-3 HC Satwinder Singh and PW-4 Umesh Mehra, Complainant. However, when the prosecution failed to conclude its evidence despite availing sufficient opportunities, the evidence of the prosecution was closed.

Statement of the accused under Section 313 CrPC was recorded, in which all the incriminating circumstances appearing in the evidence adduced by the prosecution were put to the accused, who denied the same and pleaded false implication and innocence. Though the accused opted to lead defence evidence but he closed the same without adducing any defence evidence.

The trial Court after hearing learned counsel for the parties and appreciating the evidence on record, acquitted the respondent-accused of the charge framed against him by giving him the benefit of doubt, vide judgment dated 23.12.2011.

Against the aforesaid judgment dated 23.12.2011, the petitioner preferred appeal which was also dismissed by learned Additional Sessions Judge vide judgment dated 21.12.2012. The relevant paragraphs of the said judgment read as under:-

> *"12. First of all, I proceed to examine the documentary evidence brought on record by prosecution/ complainant. Documents Ex. PQ to Ex. PW are receipts regarding payment of salary by M/s Kosmo Enterprises to Rajesh Kapila, accused/respondent No.2. From these documents, it can only be considered that accused Rajesh Kumar was employee of M/s Kosmo Enterprises. Except for these documents, there is nothing on the record to show that accused/respondent No.2 was handed over a sum of Rs.2,25,000/- by complainant for payment to M/s Delcray Cables Private Limited, Rajpura, which means that prosecution has not established on record any documentary evidence regarding entrustment of Rs.2,25,000/- to accused/respondent Rajesh Kapila for making this payment to M/s Delcray Cables Private Limited, Rajpura. So much so, there is no evidence to show that complainant party had to make payment of Rs.2,25,000/- to said firm at Rajpura. Thus, story of entrustment of Rs.2,25,000/- by complainant to accused/respondent No.2 is a doubtful affair and it is hard to believe that he had misappropriated any amount. To wriggle out of this situation, learned counsel for appellant had drawn my attention to*

document Ex. DX, copy of DDR No.13 dated 30.12.2009, but this document favours accused/respondent No. 2 Rajesh Kapila wherein it has been specifically mentioned that there was a dispute of Rs.2,25,000/- between the parties and accused/respondent has accounted for that money. Both the parties had arrived at a compromise and do no want any action in this regard. Present case was got registered against accused respondent No.1 on 1.1.2010 and nothing was mentioned regarding DDR No.13 dated 30.12.2009 in this complaint. Faced with the situation, it was contended by learned counsel for complainant/appellant that an agreement was tagged with this document, which was not brought on record by the prosecution. Photostat copy of that agreement has been placed on record now. Contents of that document also do favour accused/respondent No.2. It was mentioned in this document that a vehicle No.HR37-A-0766 is loaded with goods and standing at Rajpura for the last two/three days. He will arrange for bills of the same and get that vehicle moved to the destination. It was further mentioned in this document that vehicle was loaded with 12 tonnes material. It is further stated that in case he is not able to get delivered those goods, a case may be registered against him. This agreement is dated 30.12.2009 and present case was registered on 1.1.2010, but again it is strange to note here that present case was not got registered for non-compliance of the above agreement.

13. At this stage, story with regard to recovery of goods allegedly misappropriated by accused/ respondent No.2 Rajesh Kapila becomes relevant. It is *story of the prosecution that 480 bags of plastic granules were lying in deserted open place and got recovered by him on 4.1.2010. Placing of such a huge material in an open and deserted place is always at risk of pilferage or theft and if accused/respondent No.2 had really to misappropriate those articles, he was supposed to keep those goods in a closed and safe place instead or storing in a place open and accessible to all and sundry, which makes story of prosecution again doubtful. These goods are sought to be proved to have been delivered to accused/respondent No.2 by virtue of bills Ex. PJ, Ex. PK, Ex. PL, Ex. PM and Ex. PN. All these documents are copies of VAT invoices and name and address of the buyer is mentioned as M/s Eden Motors Pvt. Ltd., Pant Nagar, Uttranchal. In Ex. PJ, number of vehicle through which goods were delivered is mentioned as HR37-A-0766 at one place and HR38-F-9137 at the other place. Similar is the position with regard to position in Ex. PK, Ex. PL, Ex. PM and Ex.PN. Owner or truck driver of none of those vehicles was ever associated in investigation and to my mind, they were the best persons to tell how and who had transported those goods from Amritsar to alleged place of recovery. Contrary from above, it is pertinent to jot down here that goods alleged to be recovered from deserted place/ ground were handed over by investigating agency to complainant directly and were never made part of case property or evidence from which it appears that this story has been cooked up falsely. If really those goods were recovered as alleged in story of prosecution, same were required to be taken into possession by the police and then got released to complainant through*

> *court. From this fact, it can only be presumed that no such recovery has ever taken place and entire story is fabricated falsely just to frame accused/ respondent No. 2. Otherwise, if goods were got loaded in a truck from Amritsar, it was duty of transport company to deliver the same to the buyer of goods at Pant Nagar, Uttranchal instead of unloading the same at alleged place of recovery. Buyer settled at Pant Nagar, Uttranchal was also one of the important witness to prove that these goods had not reached destination as agreed, but he was not associated in investigation nor examined in this case."*

Learned counsel for the petitioner has argued that prior to registration of the FIR on 1.1.2010, the parties had compromised the matter on 29.12.2009 and pursuant thereto, Rs.1 lac was paid by respondent no.2 to M/s Delcray Cables Private Limited at Rajpura on 30.12.2009. However, the respondent no.2 did not return the remaining amount of Rs.1.25 lac and also the goods worth Rs.9,36,360/-, as undertaken by him. Learned counsel further argued that the respondent-accused has concealed the true facts and had also filed CRM-M-13093-2010 before this Court for quashing of FIR on the basis of compromise. However, since the remaining amount of Rs.1.25 lac is still outstanding, the petitioner did not support the said compromise and accordingly, the aforesaid petition was disposed of by this Court vide order dated 6.7.2010.

I have heard learned counsel for the petitioner.

There is concurrent findings of fact recorded by both the Courts below which is based on evidence led by the parties and thus, there is no scope for interference by this Court in revisionery jurisdiction re-appreciating the evidence. Reference may be made to judgment of Hon'ble the Apex Court in the case of ***Johar and others Versus M/s Mangal Prasad and another 2008(3) SCC 423,*** wherein Hon'ble Apex Court while dealing with the scope of interference by High Court in the revisional jurisdiction, has observed as under:

> *"17. The approach of the High Court to the entire case cannot be appreciated. The High Court should have kept in mind that while exercising its revisional jurisdiction under Sections 397 and 401 of the Code of Criminal Procedure, it exercises a limited power. Its jurisdiction to entertain a revision application, although is not barred, but severally restricted, particularly when it arises from a judgment of acquittal."*

Even otherwise, admittedly, the matter has been compromised between the parties and by filing the instant revision petition the petitioner-complainant intends to reopen the case, as the very object of filing the present petition is that the petitioner is facing other proceedings against him and in order to overcome those proceedings, the instant petition has been filed, though after a delay of 748 days, which the petitioner has not been able to explain.

In view of the above, I find no reason to interfere with the impugned judgments passed by the Courts below.

Accordingly, the revision petition is dismissed.

February 26, 2016 **(HARI PAL VERMA)**
AK **JUDGE**