

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

CRM-A-60-MA-2015 (O&M)

Date of decision-01.12.2016.

Rajbir

...Appellant(s)

Vs.

Churia and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Rahul Deswal, Advocate for the appellant(s).

JITENDRA CHAUHAN, J. (Oral)

CRM-786-2015

The petitioner has moved the present application under Section 5 of the Limitation Act for condonation of delay of 118 days in filing the application for the grant of special leave to appeal on the ground that he was stuck up in looking after the agricultural land and due to sowing and harvesting season, the delay had occasioned.

No valid grounds are made out to condone the huge delay of 118 days. It is well settled that the law helps the vigilant and not the person who is sleeping over his rights.

Accordingly, application lacks merit and is hereby dismissed.

CRM-787-2015

The applicant-appellant wants to place on record the photographs (Annexure P-2) as additional evidence. It is contended by the learned counsel for the applicant-appellant that the photographs clearly depict that his paddy was damaged by respondents by ploughing with

tractors.

No explanation has come forward as to why the photographs were not placed on record during the trial. Therefore, no case is made out to allow the applicant-appellant to lead additional evidence at this belated stage. Moreover, the applicant-appellant cannot be allowed to fill in the lacunae and consequently the application is dismissed.

CRM-A-60-MA-2015

By filing the present appeal, appellant seeks special leave to appeal for setting aside the order dated 26.05.2014 passed by learned Judicial Magistrate First Class, Karnal whereby respondent Nos.2 and 3 were acquitted in FIR No.113 dated 04.07.2008 registered under Sections 148, 447, 427 and 506 read with Section 149 of Indian Penal Code at Police Station Indri, District Karnal.

The sole argument raised by the learned counsel for appellant is that the contradictions in the statement of the complainant and the complaint presented by him before the Court with regard to date of occurrence are not material.

I have heard the learned counsel and have gone through the case file.

The matter was adjourned sine die vide order dated 21.12.2015. Thereafter, the applicant did not even move an application for revival of the same. This reflects his conduct and absence of interest in pursuing the matter.

However, learned Magistrate while acquitting the respondents

has observed that there is a contradiction in the statement of the complainant and the complaint regarding date of the incident. Further the motive assigned by the complainant for trespass into his land does appear convincing as two days prior to the alleged occurrence, the complainant received notice for execution of decree whereby the complainant was asked to deliver possession to the accused. It is not probable that a person who is going to get possession of land after two days will enter into land without any authorization. The alleged eye-witness, namely, Raj Kumar was not examined in Court. Taking all these facts into consideration, this Court has reached the conclusion that the trial Magistrate has rightly acquitted the respondents of the charges framed against them since the contradictions are material and have a direct bearing on the issue in question.

It is a well settled law that has been held in **C.Antony Vs. K.G.Raghavan Nair, 2002 (4) R.C.R. (Criminal) 750** that where two views are possible, one in favour of the accused and another pointing out the guilt of the accused, the view which is favourable to the accused should be adopted by the appellate Court and the appellate Court should be slow in disturbing the finding of acquittal recorded by trial Court.

Consequently, the leave to appeal is declined and the present application is dismissed on merits as well as being time barred.

(JITENDRA CHAUHAN)
JUDGE

December 01, 2016

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