

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1-MA-2013 (O&M)

Date of decision: March 24, 2017.

Raj Kumar Sharma

... **Petitioner**

v.

State of Haryana and others

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Petitioner in person.

Shri Arjun Singh Yadav, Deputy Advocate General, Haryana.

Ms. Kamalpreet, Advocate for respondent Nos.2 to 4.

A.B. Chaudhari, J.

CRM-25003-2016

This is an application for grant of condonation of delay of 855 days in filing the petition for leave to appeal against the judgment of acquittal. The petitioner appeared in person and argued the said petition at length. The petition was opposed by Advocate for respondents No.2 to 4 as well as the State counsel.

The judgment of acquittal was passed by the trial court on 11.6.2010 in Criminal Complaint No.5/52901R0027892005 dated 3.1.2004/27.9.2007 filed by the petitioner in the court of Additional Chief Judicial Magistrate, Panchkula. After the said judgment of acquittal of 11.6.2010, the petitioner filed his appeal vide CrI. Appeal No.11 of 2010 before learned Additional Sessions Judge, Panchkula. The learned

Additional Sessions Judge, Panchkula decide the said appeal on 8.10.2012 and held that the appeal before the Sessions Court was not maintainable since the judgment arose out of a private complaint filed by the petitioner. The petitioner, in person, therefore, contended that thereafter he lodged the appeal in this Court and the delay that has occurred is of 855 days and the same is only because of his bona fide mistake in instituting the appeal before the Sessions Court.

Learned Counsel for the respondents vehemently opposed the petition for condonation of delay and argued that the provision of appeal is clear and there was no reason for the petitioner to file the appeal before the Sessions Court. There is no question of mistake as alleged by the petitioner and the delay of 855 days is on higher side and cannot be condoned. She therefore prayed for dismissal of the appeal.

Having heard learned Counsel for the rival parties and upon perusal of the petition for grant of condonation of delay, I think due to the amendment to Section 372 by proviso, the confusion did exist in various quarters about the filing of the appeal against acquittal order. There was indeed a confusion as to whether the appeal would be filed before the Sessions Court, as in the present case, if the acquittal order was recorded in a private complaint case. It is in that context, I think the petitioner cannot be wholly blamed that he had made any deliberate and intentional mistake in filing his appeal before the Sessions Court. In the absence of any deliberate or intentional mistake on his part, I think the delay should be condoned and ultimately it is appropriate to adjudicate on the merits of the

matter. In that view of the matter, I condone the delay of 855 days in filing the present petition. Hence, the petition for condonation of delay is allowed. Delay is condoned.

CRM-A-1-MA-2013 (O&M)

This is a petition for grant of leave to appeal against the order dated 11.6.2010 in a private Criminal Complaint No.5/52901R0027892005 dated 3.1.2004/27.9.2007 filed by the petitioner in the court of Additional Chief Judicial Magistrate, Panchkula, by which the order of acquittal was granted by the trial court. After having condoned the delay of 855 days in filing this petition, present matter was taken up for hearing on merits since the petitioner appeared in person and the petition has remained pending for the last about four years. The consent of both the parties was taken for hearing the petition on merits. Accordingly, the parties were heard on merits.

The petitioner, in person, vehemently argued that the judgment and order of acquittal recorded by the trial judge is illegal and contrary to law. He submitted that there is a great injustice because of judgment and order of acquittal made by the trial court. The trial court has not looked into the evidence properly nor the evidence has been properly appreciated. He also contended that his wife has committed theft of ornaments and other valuables from his house and therefore, he prayed for reversal of the order of acquittal.

By the impugned order of acquittal, the respondents were acquitted of the charge framed against them. The decision in the case of

Darshan Singh v/s State of Punjab and in particular para 24 thereof relates to the parameters laid down for hearing the appeal against acquittal. It is seen from the record that the petitioner is the husband of respondent No.2 Abhilasha Sharma, while others are her parents. It appears that their marriage was solemnized on 11.3.1999 but thereafter in a very short time, the parties quarreled with each other. The petitioner made serious allegations against his wife and father-in-law. The matter went to the matrimonial court also where it was decided and the parties have separated from each other. It appears that the wife filed a criminal case under Section 498-A IPC against the petitioner where he was acquitted. The petitioner also filed criminal case against his wife and her parents making allegations of fraud and forgery, etc. With the assistance of the petitioner, I have seen the entire record, so also the reasons given by the trial court for recording the finding of acquittal. Finding recorded by the trial court and the Sessions court that the allegations made by the petitioner against his wife and father-in-law were not at all proved and therefore those allegations were found to be untrue. I do not think it proper to reproduce those allegations since they are not worth reproduction in the judgment.

I have carefully seen the reasons recorded by the trial court and compared the same with the entire record in order to find out whether the trial court made any mistake in respect of the charge framed against the respondents. Having gone through the reasons recorded by the trial court, I think the trial court made no mistake in recording the judgment and order of acquittal as there was no proof to substantiate the charge framed against the

respondents. It would be enough for me to quote the paragraphs 11, 12, 13 and 15 of the judgment of the trial court, which read thus:-

“11. In order to substantiate the allegation levelled in the complaint, complainant Raj Kumar himself, stepped into the witness box as CW1 and also examined Satya Devi, his mother as CW2 and both, CW1 and CW2, deposed on similar lines, but, neither any proof to establish the ownership of the gold set and two gold bangles nor any proof that the complainant or his mother purchased the gold set and gold, bangles, has been brought on record by the complainant. Although, complainant claimed the alleged stolen articles belonging to his mother, but, learned defence counsel has placed on record the certified copy of the complaint dated 31.5.1999 under Section 406, 420 IPC titled Saroj wife of Madan Lal versus Abhilasha etc. and attested copy of order dated 14.10.1999 passed by the learned Judicial Magistrate Ist Class, Amritsar in the aforesaid complaint as Ex.D3 and Ex.D4 respectively, wherein, Saroj wife of Madan Lal claimed that the accused No.1 while accompanying the other accused took away valuable jewellery including gold set of the complainant, i.e. Saroj Rani and thereafter, she did not return to the matrimonial house. And, vide aforesaid order Ex.D4, Shri S.P. Sood, the then learned Judicial Magistrate Ist Class, Amritsar dismissed the complaint by observing that:

“At the very outset the story as put forth by the complainant, it seems to be high unbelievable as I just wonder that as per the complainant's version accused no Abhilasha had gone to the house of her parents to appear in Probationary Officer examination and further that when complainant was well aware all this thing they perhaps there was no occasion for her to offer to accused No. 1 to take the gold set with her as the accused was not going to participate in any marriage or any other function rather she was only to appear in the examination which perhaps has least to do with the ornaments. Moreover, it is complainant's own version that she herself has entrusted the above said gold set to the accused that too out of love and affection meaning thereby, that perhaps there was absolutely no

need for the complainant to deliver her gold set to the accused rather all these things smells that perhaps the present complaint has been filed with an oblique motive to settle the score with accused No. 1, who has already instituted proceedings under section 406/398-A of IPC against Dr.Raj Kumar and other members of his family. It is also clear that the above said Dr. Raj Kumar is brother of the husband of the complainant might have also been proceeded against by that complainant Mrs. Abhilasha in the above said proceedings initiated by her under section 406/498-A of IPC read with section 34 of the IPC cannot be ruled out. So far as the supporting witnesses examined by the complainant are concerned, CW3 Satya Devi is her own mother, Dr. Raj Kumar CW4, as already stated is the brother of husband of Complainant. Both the above said witnesses are close relatives of the complainant, therefore, they will naturally depose in her favour. It is only PW2 Parmod Bhandari who does not seem to be related to the complainant and if we go through, his statement, he has deposed that it was accused Mrs. Abhilasha who asked for gold set from the complainant whereas the above said stand is totally in contradiction to the stand taken by the complainant that she had herself offered the above said gold set to accused No. 1 Abhilasha and that too out of love and affection.

Whereas CW4, Sharda, who is sister-in-law of the complainant, stated in her examination-in-chief that she (accused no.2) took away gold bangles and gold set of his brother-in-law, i.e. Complainant.

12. CW3 is M.G. Rampal and CW5 is Raj Kumar Verma. I have gone through the statements of both, CW3 and CW5, but I have not been able to see any significance in their statements so far as the present case is concerned.

Thus, from the statements of the witnesses examined by the complainant, it is crystal clear that the complainant has miserably failed to establish that the accused persons stole the gold set and gold bangles belonging to him or that they played any fraud upon him.

13. On the other hand, accused have placed on file the certified

copy of judgment and decree dated 10.11.2003 passed in HMA case no. 55 of 15.2.2002 titled Abhilasha Versus Raj Kumar as Ex.D1 and D2, respectively, wherein, while deciding the divorce petition filed by accused No. 2(Abhilasha), Shri L.N.Jindal, the then learned Additional District Judge, Panchkula has observed that “the allegations regarding theft in the house of the respondent (complainant in the present case) by the petitioner and her father are also imaginary and baseless and the same are not substantiated by any cogent evidence. In fact, the respondent has levelled all sort of allegations against the petitioner concerning her character and uprightness. And the self serving statement of the respondent and his mother is also more to the effect that the petitioner committed theft in his house.

15. Admittedly, no revision or appeal has been preferred by the present complainant against the aforesaid orders Ex.D1 to Ex.D6.”

I fully agree with the reasons recorded by the trial court for recording the order of acquittal.

In that view of the matter, I find no merit in the petition seeking leave to appeal against the order of acquittal. In the result, I make the following order:-

ORDER

- (i) Petition for the grant of leave to appeal is dismissed;
- (ii) Consequently appeal is dismissed.

March 24, 2017.

kadyan

[A.B. Chaudhari]
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No