

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

CRM-A No.1380-MA of 2015 (O&M)

Date of decision: 05.09.2017

Raghunath

....Applicant/Appellant

Versus

Sumer Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. J.S. Hooda, Advocate for the applicant/appellant.

Mr. Rishav Jain, Advocate for the respondents.

ARVIND SINGH SANGWAN J. (Oral)

CRM No.25367 of 2015

Prayer in this application is for condoning delay of 268 days in filing the appeal.

Reply has been filed on behalf of the respondents.

It is submitted in the application that after passing of the impugned judgment dated 31.07.2014 acquitting the respondents, the applicant/appellant had filed an appeal before the Lower Appellate Court which was, however, declined vide judgment dated 04.03.2015 by holding that the appeal is not maintainable and, thereafter, the present appeal has been filed after a delay of 268 days.

This fact is not denied by counsel for the respondents.

Heard.

In view of averments made in the application supported by an affidavit of Raghunath, the applicant-appellant and in absence of any challenge to correctness of the averments set up in the application, the

application is allowed and delay of 268 days in filing the appeal stands condoned.

CRM-A No.1380-MA of 2015

Heard.

Leave to appeal granted.

Registry is directed to number the same as main appeal.

This appeal has been preferred against the order dated 04.03.2015 passed by the Court below vide which the respondents/accused were acquitted in complaint No.CHI0000090/2014 under Sections 323, 325, 506 read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC').

Brief facts of the case as pleaded in the complaint are that the accused persons gave beatings to the appellant/complainant on 10.12.2009 and on account of a stick blow given by one of the accused Sameer one of the tooth of the appellant/complainant was dislocated. Thereafter, the appellant registered an FIR No.19 dated 26.02.2010 under Sections 323, 325, 506 read with Section 34 IPC which was enquired into. However, a cancellation report was submitted by the Deputy Superintendent of Police, Hodal on 11.03.2010. The appellant filed the present complaint as a protest petition to the FIR. The appellant in support of his evidence has recorded the statement of CW1 – Govind Ram, Dr. Manoj Kumar as CW2, Dr. Ashima Kalra as CW3, Constable Satbir as CW4, Sanjaywati as CW5 and Vinod as CW6.

It is submitted on behalf of the appellant that from the statement of CW2 and CW3 it is proved that one of the tooth of the appellant was missing and two witnesses i.e. CW5 – Sanjaywati and

CW6 – Vinod has corroborated the version of the complaint. It is, thus, submitted that the trial Court has wrongly acquitted the respondents/accused.

The learned trial Court while acquitting the accused persons has made the following observations:-

“11. After hearing the rival contentions raised by learned counsel for the parties, I find forcing in the contention of learned counsel for the accused for a simple reason that in the complaint it is stated by the complainant that accused Sumer give a blow of LATHI on his tooth which resulted in dislocation of his tooth, but when this matter was investigated by the Deputy S.P., Hodal the allegation regarding the dislocation of tooth were denied by all the witnesses during above that investigation. As per the witnesses, there was an altercation between the accused and complainant and no tooth was dislocated of the complainant at that time. Moreover, PW – Dr. Manoj Kumar only deposed complaint of pain in the body of the complainant, which is no injury in the medical jurisprudence. CW3 Dr. Ashima Kalra also did not find any fresh injury in the jaw of the complainant. Further, she also did not rule out the possibility of these type of injuries as self sustained injuries, in her evidence.

12. In the complaint it is stated by the complainant, that first for all Govind Ram i.e. CW1 has arrived at the spot, after the alleged assault by the accused persons and then Govind Ram informed the family members of complainant regarding the above said alleged incident. But when CW5 Sanjaywati and CW6 Vinod appeared in the witness box they stated that, offence has happened in their presence. Therefore, there is a contradiction between the statements of parties regarding their presence at the spot, at the time of the alleged incident.

13. Moreover, no reason whatsoever has been given by the complainant as to why the accused persons gave him the above said beatings. Whereas, the CW1, admitted in his cross-examination that accused Sumer and others had filed a case against complainant Raghunath in police station, Hodal as he had entered into their house. This is only reason for alleged altercation between the parties. PW5 also do not deny the above said fact regarding the trespass of the complainant in house of the accused Sumer and others.

14. As per the other complainant witnesses, many persons have gathered at the spot at the time of incident but the complainant did not examine any of the independent witness except his family members, who also failed to give any requisite corporation or the testimony of the complainant. When the testimony of the complainant was also under scanner, in the absence of due corroboration, examination of some independent witnesses, could prove great help for the case of the complainant.

15. Hence, in view of the above discussions, the complainant has miserably failed to bring home the guilty of the accused for the commission of the offence, they have been charged with. Hence, the accused are hereby acquitted from the charges levelled against them. Their bail and surety bond are discharged. Filed be consigned to record room after due compliance.”

On the other hand, counsel for the respondents has submitted that there is a delay of four days in reporting the matter to the police and as per the version of the complainant, he himself has moved an application for the first time on 14.12.2009 on the day when he was medico legally examined by Dr. Ashima Kalra who appeared as CW3.

Counsel for the respondents has referred to the statement of CW3 who has stated that at the time of examination, she did not find any fresh injury on the jaw of the complainant and accordingly, it is submitted on behalf of the respondents that the injury noticed by the doctor in the MLR of the appellant/complainant was not a fresh injury and the doctor in the cross-examination has not denied the possibility of such injury being self-sustained injury. It is, thus, submitted that the appellant has failed to explain the delay of 04 days in reporting the matter to the police or getting himself medico legally examined. It is also submitted that during the investigation of FIR No.19, the Deputy Superintendent of Police, Hodal has conducted a detailed enquiry and found that the FIR has been lodged on false allegations. It is further submitted that there are material contradictions in the statement of prosecution witnesses which makes the prosecution version highly doubtful.

After hearing the counsel for the parties, I do not find any merit in the present appeal as the appellant/complainant has failed to give any reasonable explanation about 04 days delay in lodging the matter with the police and in fact, he got his medical examination done only after 04 days, therefore, the finding recorded by the trial Court is well reasoned and does not require any modification or interference by this Court.

Dismissed.

05.09.2017
yakub

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No