

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-2079-MA of 2015

DATE OF DECISION: JANUARY 11, 2017

RAKESH KUMAR

...APPLICANT

VERSUS

SMT. SANTOSH AND ANOTHER

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH.**

PRESENT: MR. S.K. YADAV, ADVOCATE FOR THE APPLICANT.

M. JEYAPPAUL, J.

CRM-42361-2015

1. There is a delay of 80 days in filing the appeal.
2. For the reasons set out in the application, the delay is condoned and the application is allowed.

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3. Complainant Rakesh Kumar has filed the present application under Section 378(4) Cr.P.C. seeking special leave to file an appeal aggrieved by the judgement of acquittal recorded by the trial Court.

4. Complainant in his private complaint filed under Section 420/406/409/467/468/471/120-B IPC has alleged that accused No.1 Santosh Devi daughter of Sultan Singh was born on 15.4.1964. She got married with one Matadin of village Nautana. As per the old age pension scheme floated by the Government of Haryana, a person above 60 years of age was eligible for grant of pension. It is alleged that 1st accused who was just 47 years of age hatched a conspiracy with accused No.2 Ashalata, Sarpanch, Gram Panchayat

Nautana and applied for old age pension furnishing her age as 60 years and got it attested by accused No.2 and misappropriated the amount of old age pension fraudulently.

5. The trial Court having found that except the report under Section 202 Cr.P.C., there was no evidence to establish that accused No.1 was born on 15.4.1964, acquitted the accused.

6. We heard the submissions made by learned counsel for the applicant in the background of the judgement under challenge.

7. It is a well settled proposition of law that the report submitted by the police official under Section 202 Cr.P.C. can never be a substantial evidence as the accused had no opportunity to cross-examine the witnesses figured during the preparation of such report. In other words, the statement of witnesses recorded during the course of enquiry which culminated in the report under Section 202 Cr.P.C. is not at all admissible in evidence and as such, the same cannot be a basis for recording conviction. In our considered view, the trial Court has rightly rejected the report under Section 202 Cr.P.C. heavily relied upon by the complainant. The documents exhibit CW1/A and CW2/B disclose that Santosh Devi daughter of Sultan was born on 15.4.1964, whereas CW1/2 to Exhibit CW1/38 reflect that Santosh Devi wife of Matadin was 62 years of age. The complainant has miserably failed to connect Santosh Devi daughter of Sultan to Santosh Devi wife of Matadin.

8. In the above facts and circumstances, in our considered view, the trial court has rightly rejected the case of the complainant and recorded acquittal. Therefore, we are pleased to decline special leave to file appeal

sought for by the applicant.

9. Accordingly, the application stands dismissed.

(M. JEYAPPAUL)
JUDGE

January 11, 2017
Gulati

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether Speaking/Reasoned	:	Yes
Whether Reportable	:	No