

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

CRM-A-1476-MA of 2018 (O&M)
Decided on:-October 09, 2018.

Ratni Devi deceased through LRs Ramanand.

.....Applicant.

Versus

Smt. Kavita.

.....Respondent.

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

Present:- Mr. B.K. Bagri, Advocate
for the applicant.

HARI PAL VERMA, J.

CRM-26009-2018

Prayer in this application filed under Section 5 of the Limitation Act, 1963 read with Section 482 Cr.P.C. is for condonation of delay of 6 days in filing the present application under Section 378(4) Cr.P.C. for grant of leave to appeal.

For the reasons stated in the application, the same is allowed and the delay of 6 days in filing the instant application for grant of leave to appeal is condoned.

CRM-A-1476-MA-2018

Applicant Ratni Devi (since deceased and represented by her son and legal heir Ramanand) (hereinafter referred to as the 'complainant') has filed the present application under Section 378(4) of the Code of Criminal

Procedure for grant of leave to appeal against the judgment dated 19.03.2018 passed by learned Sub-Divisional Judicial Magistrate, Bawal, District Rewari, whereby respondent Kavita (hereinafter referred to as the 'accused') was acquitted of the charges levelled against her in a complaint filed by the complainant under Sections 420, 467, 468, 471 and 506 IPC.

Briefly stated, it is the case of the complainant that she was an old aged lady and was receiving old age pension from the Government. However, she expired during the pendency of the complaint and is now represented by her son Ramanand.

It was pleaded by the complainant that as per the Government directions, the Sarpanch of Gram Panchayat is required to disburse the pension to the eligible persons. For this purpose, the accused received the entire amount from the Social Welfare Department. She was supposed to identify the eligible person prior to the handing over the pension amount to him/her after obtaining his/her signature or thumb impressions. The complainant did not receive the old-age pension for the month of July, 2012. When the complainant asked about the pension from the accused, who was Sarpanch of the village, she (complainant) was informed that the pension was not received from the Government. Then upon verification from Social Welfare Department, the complainant came to know that an amount of Rs.3,250/- was disbursed as pension for the month of July, 2012. However, the complainant did not receive the said amount. In this manner, the accused misappropriated the said amount after putting the forged thumb impressions of the complainant. When the complainant verified this fact from the accused,

she not only misbehaved with her but also threatened to kill her. Accordingly, the complainant submitted a complaint to the Deputy Commissioner, Rewari, who also conducted an enquiry and prepared a report, but still, no action was taken against the accused. During the enquiry, the accused had stated that she had handed over the amount of pension to Dhanno Devi, who is the sister-in-law of the complainant. However, even Dhanno Devi never received a single penny of the amount of pension. Thus, the accused has committed a fraud with a view to grab the amount of pension belonging to the complainant. Hence, the present complaint.

After recording preliminary evidence of the complainant, the accused was summoned to face trial under Section 406 IPC vide order dated 22.05.2014 passed by learned trial Court.

Therefore, pre-charge evidence of the complainant was recorded. Finding a *prima facie* case against the accused, learned trial Court charge sheeted her under Section 406 IPC vide order dated 02.12.2017, to which she did not plead guilty and claimed trial.

After recording the evidence and hearing the arguments of both the sides, learned trial Court acquitted the accused of the charges levelled against her vide impugned judgment dated 19.03.2018.

Aggrieved against the aforesaid judgment, the complainant has filed the present application under Section 378(4) Cr.P.C. for grant of leave to appeal.

Learned counsel for the complainant has argued that the trial Court has not appreciated the evidence on record properly, rather, overlooked

the evidence produced on record by the complainant. The accused was acquitted by the trial Court without applying its judicious mind to the facts and circumstances of the case.

He has further argued that the guilt of the accused was proved in the enquiry conducted by district administration also, wherein it was found that the amount of pension was not paid to the complainant, rather, the same was paid to some other lady. It was, therefore, to be noted that the other lady i.e. Dhanno Devi was not authorised by the complainant to represent or receive the amount of her pension.

He has further argued that the impugned judgment dated 19.03.2018 passed by the trial Court is illegal and based upon misreading of facts and evidence and is not sustainable in the eyes of law. Therefore, the same is liable to be set aside and the accused be convicted and sentenced accordingly.

I have heard learned counsel for the complainant.

The allegation of the complainant is that the accused has misappropriated the amount of Rs.3,250/-, whereas the plea of the accused is that the amount was handed over to Dhanno Devi, who is sister-in-law of the complainant, as at the time of disbursement of the amount of pension, the complainant was not available.

During pendency of the complaint before the trial Court, the complainant had expired and her son Ramanand appeared as her legal heir. Said Ramanand, while appearing in the witness box as PW2 has denied in his cross-examination that Dhanno Devi was his paternal aunt and she received

any amount on behalf of the complainant. Interestingly, when the complaint was filed by the complainant, she had specifically mentioned that Dhanno Devi is her sister-in-law and when Dhanno Dvi was ordered to be summoned in the Court for obtaining her specimen signatures, she also admitted the fact of this relationship. The matter was reported to the Deputy Commissioner, Rewari, who conducted an enquiry against the accused as well as Gram Sachiv Jai Bhagwan. In the enquiry report Ex.PW1/B, it was established that the amount of Rs.3,250/- was received by Dhanno Dvi. Even handwriting expert Jaiveer Singh Yadav, who appeared before the trial Court as DW3, has stated that the thumb impressions on the APR form belong to Dhanno Devi. Thus, the complainant has failed to establish her case. The amount of pension was disbursed to Dhanno Devi, who is sister-in-law of the complainant.

Though Ramanand as PW2 has denied the factum of relationship of Dhanno Devi with the complainant, but once the complainant in her life time admitted the fact that Dhanno Devi is her sister-in-law coupled with the fact that it has duly been proved on record that said Dhanno Devi received the amount of pension on behalf of the complainant, this Court finds that there is no illegality in the impugned judgment dated 19.03.2018 passed by learned trial Court, whereby the accused was acquitted of the charges levelled against her.

The complainant has failed to show any misreading of evidence by the learned trial Court and has not been able to point out any legal error in the judgment under challenge, which may warrant interference by this Court. Thus, in the absence of any cogent evidence on record to connect the accused

with the alleged crime, no case is made out for interference in the impugned order dated 19.03.2018 passed by learned Sub-Divisional Judicial Magistrate, Bawal.

Accordingly, the present application, being devoid of any merit, is dismissed. Leave to appeal is declined.

October 09, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No