

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

**CRM-A No. 1400-MA of 2016 (O&M)
Date of Decision: 26.02.2019**

Risalla

..... Appellant

Versus

Jagdish

..... Respondent

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present: Mr. Pradeep Panwar, Advocate
for the applicant-appellant.

JASWANT SINGH, J.

CRM No. 24265 of 2016

Present application has been filed under Section 5 of the Limitation Act for condonation of delay of **07 days** in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay of **07 days** in filing the application for grant of Leave to Appeal is condoned.

Application stands disposed of accordingly.

CRM-A No. 1400-MA of 2016

1. Present application has been filed under section 378 (4) of the Code of Criminal Procedure, 1973 (in short “the Code”) for grant of Special Leave to Appeal against the judgment of acquittal dated 18.05.2016 passed by the Chief Judicial Magistrate, Karnal.

2. In nutshell, the facts of the case are that the respondent-Jagdish had maintained a civil suit of permanent injunction against the complainant-

appellant in the Court of Civil Judge, Karnal. Respondent in order to

support his claim before the Civil Court also relied upon the *Aksizra* i.e. village Map and in the *Aksizra* a passage of 11 feet wide was shown in Khasra No.1 4/9/2(0-19), whereas in fact, no passage was in existence in this Khasra number.

On the basis of these allegations, the prosecution against the respondent for commission of offence under section 420 Indian Penal Code (IPC) was processed. After completion of pre-charge evidence, the trial Court charge-sheeted the respondent for commission of offences under sections 196, 420, 465, 468, 471 IPC. On completion of prosecution evidence, the statement of respondent under section 313 Cr.P.C. was recorded in which all the incriminating circumstances appearing by way of prosecution evidence were put to him and he pleaded his innocence and false implication. He also put forth his stand by leading defence evidence that the copy of *Aksizra* was wrongly tendered by mistake. Mr. Deep Chand Gupta, Advocate, appeared in the witness box as a defence witness.

3. On the basis of weak evidence led by the prosecution, the trial Court has acquitted the respondent for the commission of offences for which he has been charge-sheeted.

4. Learned counsel for the applicant-appellant has argued that impugned judgment of the trial Court is wrong both on facts and law. The trial Court has erroneously ignored the evidence of prosecution witnesses and has wrongly given the undue weightage to the defence evidence. It was duly proved on the record before the trial Court that the document was produced by the respondent with intention to create false evidence in his favour against the appellant and all the material witnesses have stated in single voice that the respondent in order to seek the favourable order from

the Civil Court in his favour had intentionally produced a false copy of *Aksizra*. At last, he has prayed that the appeal may kindly be accepted after allowing the application for grant of Leave to Appeal.

5. Counsel for the applicant heard and we have also gone through the paper-book very carefully with his assistance.

6. There is no dispute that a civil suit was instituted by the respondent against the appellant in the Civil Court at Karnal. It is also undisputed that copy of *Aksizra* was produced by the respondent alongwith his plaint to support his claim wherein he has showed a passage in Khasra No. 14/9/2(0-19). It is also crystal clear that Mr. Deep Chand Gupta, Advocate, who appeared in the witness box, has categorically stated that due to mistake, the passage was wrongly shown in the document under question vide Ex. CW3/A. This witness has also categorically stated that the respondent simply handed over the various revenue documents to him for preparation of his pleadings, but due to mistake, being committed by Draftsman, a passage has been wrongly shown. It is also evident that on the basis of production of wrong document, no favourable order was passed by the Civil Court in favour of respondent. Meaning thereby, nothing was gained wrongly by the respondent and no wrongful loss was caused to the appellant by production of wrong document.

7. We are of the view that in order to hold a person guilty of cheating, it is necessary to say that he had fraudulent or dishonest intention at the relevant time. It was also incumbent on the appellant-complainant to indicate that he was deceived in any particular manner. The mistake was rectified by the respondent by filing amended pleadings in the civil suit. It can be said that no offence in the eyes of law has been committed by the

respondent, especially, in the wake of fact that complainant/appellant has failed to prove that there was any fraudulent or dishonest intention of the respondent to produce a wrong document before the Civil Court. Every incorrect or false statement or production of wrong document do not make it incumbent on the Court to hold guilty a litigant, unless a requisite fraudulent or dishonest intention of the litigant beyond doubt is established by the prosecution.

8. That apart, the scope of the Appellate Court, while dealing with the appeals against acquittal, is settled. Though there is no embargo on the Appellate Court to reverse the decision based on the evidence upon which the acquittal is based, generally the order of acquittal based on presumption of innocence of the accused, is further strengthened by acquittal. The Appellate Court, while considering an appeal against acquittal, has to consider whether there are compelling and substantial reasons for reversing the order of acquittal. The Appellate Court can reverse the order of acquittal if the view taken by the Court is palpably erroneous and it could not have been taken by the Court of competent jurisdiction and is taken against well settled canon of criminal jurisprudence. Merely because the Appellate Court, on re-appreciation and re-evaluation of the evidence, is inclined to take a different view, interference with the judgment of acquittal is not justified. If the view taken by the trial Court is a possible view, even if two views are equally balanced, it need not result in interference by the Appellate Court in the judgment of the trial Court of acquittal. The Appellate Court will have to see whether there is perversity in the decision, if the conclusions are contrary to the evidence on record, or the Court's entire approach is patently illegal or it is based on erroneous understanding.

If the order of acquittal is to be reversed, the Appellate Court must examine and discuss the grounds given by the trial Court to acquit the accused and must give cogent reasons to overturn the findings. Thus, while considering the order against acquittal, generally the Appellate Court should not interfere where view taken by the trial Court is not unreasonable or perverse. With this legal position in mind, we have considered the view taken by the trial Court is a possible view and it does not require any interference by this Court.

9. In view of the above discussion, this Court is of the opinion that the trial Court, while appreciating the entire evidence in its proper perspective, had rightly observed in the impugned judgment and held that the prosecution had failed to prove its case against the respondent beyond any reasonable doubt. Thus, no case is made out for any interference in the impugned judgment. The view of the trial Court is hereby affirmed and is maintained.

10. The **application** is without any merit and, therefore, **dismissed**.
Leave to Appeal is declined.

(JASWANT SINGH)
JUDGE

February 26, 2019
'dk kamra'

(ARUN KUMAR TYAGI)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No