

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

**CRM-A No. 31-MA of 2018 (O&M)
Date of Decision: 17.07.2019**

State of Punjab

..... Appellant

Versus

Kuljit Singh and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Pankaj Gupta, Additional Advocate General, Punjab
for the applicant-appellant/State.

JASWANT SINGH, J.

CRM No. 639 of 2018

Present application has been filed under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay of **191 days** in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay of **191 days** in filing the application for grant of leave to appeal is condoned.

Application stands disposed of accordingly.

CRM-A No. 31-MA of 2018

1. Present application has been filed under Section 378 (3) of the Code of Criminal Procedure, 1973 (in short “the Code”) for grant of Leave to file the Appeal against the judgment of acquittal dated 07.03.2017 passed by learned Special Judge, Gurdaspur, whereby respondents/accused have been acquitted of charges for commission of offences under **Sections 409/420/120-B IPC and Section 13 (1) D, read with Section 13 (2) of**

Prevention of Corruption Act, 1988.

2. Briefly stated the facts of the prosecution case are that an enquiry was conducted by the Vigilance Department. After enquiry, it was found that one water tank was to be erected by the Water Supply Department and for erection of water tank, a rough estimate of expenditure of ₹ 36,34,000/- was prepared in the year 2002 and out of which, an amount of ₹ 9,95,000/- was allocated for the construction of water tank and laying of water pipes. In this regard, tenders were invited by the Department and after bid, the contract was allocated to ***Kuljit Singh son of Gian Singh*** for installation of pipe lines and pump chamber. However, for the construction of tank, the work was allotted to ***Iqwak Singh son of Iqbal Singh***, the work was started on 10.12.2002 and that was completed on 15.12.2003. The total cost of the work was ₹ 9,95,000/-. During enquiry, it was found by the Vigilance Department that even elapse of eight (08) years after completion of work, the water supply to the villagers was not provided and in this manner, contractors and Ex-Sarpanch-the accused, namely Sushil Kaur (respondent No. 3 herein) have caused loss to the Government exchequer. On the basis of these allegations, an F.I.R. was registered and investigation was commenced.

After completion of necessary formalities of investigation, the report under Section 173 Cr.P.C. was presented before the Court by the prosecution against the respondents/accused. Copies of challan as envisaged under Section 208 Cr.P.C. were supplied to the accused free of cost. Finding a *prima facie* case, the accused were charge-sheeted by the Court for commission of offences under **Sections 409/420/120-B IPC and Section 13**

(1) D, read with Section 13 (2) of Prevention of Corruption Act, 1988.

To prove its case against the respondents-accused, the prosecution has examined as many as thirteen (13) witnesses, which are as under:-

“ Navtejpal Singh, Patwari as PW-1, Bhupinder Singh as PW-2, Davinderpal Singh as PW-3, Gurmukh Singh as PW-4, PHC Kuldip Singh as PW-5, PHC Mohinder Pal as PW-6, Sh. Pardeep Malik, SP (D) as PW-7, Subash Chander, Retired DSP as PW-8, Satnam Singh as PW-9, Harjinder Singh, Panchayat Secretary as PW-10, Ravinderpal Singh Kanwal as PW-11, Lakhbir Singh as PW-12 and Mukhtair Singh as PW-13.

On completion of prosecution evidence, the statements of accused under Section 313 Cr.P.C. were recorded in which all the incriminating circumstances appearing by way of evidence of prosecution against the respondents-accused were put to them and they pleaded their innocence and false implication. No defence evidence was produced.

On the basis of weak evidence led by the prosecution, the Court of Special Judge has acquitted the respondents for the commission of offences for which they have been charge-sheeted.

3. We have heard the learned counsel for the applicant-appellant/State and have also gone through the paper book very carefully.

Coming to the statement of PW-11 (*Ravinderpal Singh Kanwal, X.EN*), who has testified that he alongwith officials of the Vigilance Department inspected the site and thereby submitted the report vide *Ex. PW-11/A*, in which it was noticed that there was some leakage in the water tank

and also observed leakage in the pipelines laying for supply of the water. It has also come on the record that electricity was not in operation and due to non supply of electricity, the water could not be supplied to the villagers. It has also come on the record by way of enquiry conducted by above referred witness that one *Chowkidar* was appointed by the village Panchayat and scheme for supply of water was started. However, due to disconnection of the electricity supply, scheme could not be succeeded. No salary was given to the *Chowkidar* because the villagers did not pay the water charges. Meaning thereby, it does not lie in the mouth of prosecution to say that no water tank was erected by the accused. As a matter of fact, the water supply could not be provided to the villagers for lack of other ancillary services, which were necessary for running of water motor connection. The trial Court has rightly observed in the impugned judgment that none of the ingredient to constitute the offences have been proved by the prosecution against the accused. In this manner, we find that the trial Court has right in its opinion that the prosecution has miserably failed to prove its case beyond shadow of reasonable doubt against the accused.

4. 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.

5. 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, has rightly held that the prosecution has failed to prove its case against the accused-respondents beyond any reasonable doubt. Thus, no case for any interference in the impugned judgment is made out. The view of the trial Court is hereby affirmed and is maintained.

The **application** is without any merit and, therefore, **dismissed**.

Leave to Appeal is declined.

(JASWANT SINGH)
JUDGE

July 17, 2019
'dk kamra'

(LALIT BATRA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>