

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

**CRM-A No. 833 of 2019 (O&M)
Date of Decision: 09.07.2019**

State of Haryana

..... Appellant

Versus

Jamshed and another

..... Respondents

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

Present: Mr. Rajeev Doon, Assistant Advocate General, Haryana,
for the applicant-appellant/State.

JASWANT SINGH, J.

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 14.11.2017 passed by learned Additional Sessions Judge, Mewat, whereby respondents/accused have been acquitted for offences under Sections 379, 188, 120-B, 341, 307, 332, 353, 148 & 149 of Indian Penal Code and Section 3 of Prevention of Damage to the Public Property Act.

2. Facts of the case of the prosecution are that a written application was presented by the **complainant-Anil Kumar**, Inspector Mining Department, to the fact that he along with other team of the Mining Officers and police officials were on checking duty of the illegal mining in the hills of village *Dhulawat* and were travelling in the Government vehicle. During checking it was found that some of the persons were working with one JCB and two tractors along with compressors and were indulging in illegal mining and doing holes for the purpose of blasting. Those persons,

on seeing the team, ran away from the spot with tractors and compressors. However, the JCB machine was left on the spot. On checking the JCB, they found its Engine No. as 4H22518-884669 and Chasis No. as 1365783E2288, which was taken into police possession and was removed to police station by Constable Sanjeet, but when the team reached near bridge of KMP, few of the persons came there by travelling in two tractors-trolleys and they park their tractors in front of the Government vehicles and JCB. In the meantime 30/35 motorcyclists also came there and started pelting stones upon the officers of the team. The police party tried to make them understand not to pelt the stones, but they remained continue to pelt the stones upon them, due to which ASI Suresh and ASI Yashpal received injuries on their person. Those persons also snatched the JCB machine and also caused damage to the Government vehicles. During investigation, the name of the assailants came on the record as ***Khurshid, Farukh, Jamshed, Juber, Mammu, Mustaq, Khurshid, Hanif, Sirra*** etc. and they were involved in the act of illegal mining. On the basis of these facts, an F.I.R under Sections 379, 188, 120-B, 341, 307, 332, 353, 148, 149 IPC & Section 3 of Prevention of Damage to the Public Property Act was registered.

After completion of the necessary formalities of investigation, a report under Section 173 Cr.P.C. was presented by the prosecution in the Court against the respondents/accused. Thereafter, the case was committed to the Court of Sessions. Finding a *prime facie* case, the respondents/accused were charge-sheeted for commission of offences under Sections 148, 307, 332, 353 read with Section 149 IPC, Sections 341, 379, 188 read with Section 120-B IPC and Section 3 of Prevention of Damage to

the Public Property Act.

To prove its case against the respondents-accused, the prosecution has examined as many as Ten (10) witnesses, which are as under:-

“ Anil Kumar, Mining Inspector as PW-1, Shanti Swaroop, Mining Guard as PW-2, Dr. Pankaj Vats as PW-3, HC Dharma Pal Draftsman as PW-4, ASI Dinesh Kumar as PW-5, ASI Yashpal as PW-6, Constable Sanjeet as PW-7, SI Rajender Singh as PW-8, Inspector Devender Singh as PW-9 and EASI Suresh Kumar as PW-10.

On completion of prosecution evidence, the statements of the accused persons 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 Sessions Court has acquitted the respondents for the commission of offences for which they have been charge-sheeted.

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

At the very outset of the matter, we are of the view that the instant appeal deserves its rejection. Indisputably the prosecution witnesses were not known to the assailants and even to the persons those who were involved in the mining activities. It is itself case of the prosecution that no identification parade was conducted to establish the identity of persons, who were involved in the mining activities and those who attacked the team of

the officials, which was on checking of illegal mining.

As such, in the absence of establishing the correct identity of the suspects, the respondents-accused cannot be saddled with the commission of offences.

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.

Since the main application, seeking leave to appeal, stands dismissed on merits, no orders are required to be passed in the miscellaneous application seeking condonation of delay of 406 days in filing the appeal.

(JASWANT SINGH)
JUDGE

July 09, 2019
'dk kamra'

(LALIT BATRA)
JUDGE

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