

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

**CRM-A No. 2045-MA of 2017 (O&M)
Date of Decision: 27.08.2019**

State of Haryana

..... Appellant

Versus

Nadim and another

..... Respondents

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

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

JASWANT SINGH, J.

CRM No. 29138 of 2017

Present application has been filed under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay of **67 days** in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay of **67 days** in filing the application for grant of Leave to Appeal is condoned.

Application stands **disposed of** accordingly.

CRM-A No. 2045-MA of 2017

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 Appeal against the judgment of acquittal dated 21.12.2016 passed by learned Additional Sessions Judge, Ambala.

2. Tersely put the facts of the prosecution case are that a written application was moved by the complainant to the local police alleging

therein that he received a secret information that Canter bearing Registration No. HR-99T-4673 was loaded with cows and was on the way to Uttar Pradesh (U.P.) State. On receiving this information, the **complainant-Mukesh Bawa** approached the local police and apprised to the police with the information and on receiving the information, the local police constituted a picket (*Nakabandi*) in front of police post. Thereafter, a Canter bearing Registration No. HR-99TW-4673 was seen coming from side of Ambala Cantt. and police made a signal to the driver of the canter to stop the vehicle by flashing battery, but driver of the canter did not stop the vehicle despite of receiving of the signal of the local police and he in an intention to kill the complainant as well as the police officials standing on the check post, started the vehicle to drive rashly and negligently and manage to escape from the spot. Thereafter, an F.I.R. was registered and the accused persons were arrested during investigation. After completion of necessary formalities of investigation, the report under Section 173 Cr.P.C. was presented before the Court of Illaqa Magistrate. Thereafter, the case was committed by the Illaqa Magistrate to the Court of Sessions. Copies of challan as envisaged under Section 208 Cr.P.C. were supplied to the accused free of cost.

Finding a *prime facie* case, the accused/respondents were charge-sheeted for the commission of offences under **Sections 307 of IPC, along with Section 11 of Prevention of Cruelty to Animals Act (PCA) and Section 3/181 of Motor Vehicle Act.**

To prove its case against the respondents-accused, the prosecution has examined the following seven (07) witnesses:-

Mukesh Bawa (Complainant) as PW-1, SI Satinder Kumar as PW-2, HC Sushil Kumar as PW-3, SI Bhushan Dass as PW-4, ASI Ram Saran as PW-5, SI Balvinder Singh as PW-6 and Jitender as PW-7,

On completion of prosecution evidence, the statements under Section 313 Cr.P.C. was recorded by the Sessions Court 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.

On the basis of weak evidence produced by the prosecution against the present respondents, they have been acquitted of the charges for the commission of offences under **Sections 307 of IPC, along with Section 11 of Prevention of Cruelty to Animals Act (PCA) and Section 3/181 of Motor Vehicle Act.** Chance of defence evidence was given but no defence evidence was produced.

3. We have heard learned Assistant Advocate General, Haryana, appearing for the applicant-appellant/State and have also gone through the paper-book very carefully with his assistance.

First of all, the identity of the accused is not established by the prosecution. None of the prosecution witness could dare to prove on the record that the accused facing the trial Court were those persons who were sitting in the alleged vehicle to which the police party gave a signal to stop at the time of constituting of picket in front of police post.

Further, the secret information is not duly supported and corroborated by any material evidence because prosecution has failed to prove that the secret information was correct and on the basis of that secret

information, the cows were recovered from that vehicle. It is also beyond

stretch of imagination that in case the canter/offending vehicle hit the barricades and the police officials made their attempt to save themselves due to giving of hit by the canter, then how none of them did not receive any injury on their person. The statement of the accused persons under Section 27 of the Indian Evidence Act also pales into insignificance in the absence of effecting of any recovery on the basis of that statement.

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 is made out for any kind of interference in the impugned judgment. The view of the trial Court is hereby affirmed and is maintained.

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

(JASWANT SINGH)
JUDGE

August 27, 2019
'dk kamra'

(LALIT BATRA)
JUDGE

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