

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

**CRM-A No. 123 of 2019 (O&M)
Date of Decision: 19.07.2019**

Pooja

..... Appellant

Versus

State of Haryana and others

..... Respondents

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

Present: Ms. Sheenu Sura, Advocate for the applicant-appellant.

JASWANT SINGH, J.

CRM No. 1061 of 2019

Present application has been filed under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay of **06 days** in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit of the applicant, the delay of **06 days** in filing the application for grant of leave to appeal is condoned.

Application stands disposed of accordingly.

CRM-A No. 123 of 2019

1. Present application has been filed under Section 378 (4) 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 03.10.2018 passed by learned Additional Sessions Judge (Exclusive Court) for the cases of heinous crimes against women, Jhajjar, whereby respondents/accused have been acquitted for offences under Sections 363, 366-A, 346, 506. 120-B IPC and Section 4/12 of Protection of Children from Sexual Offences Act(in

short “POCSO Act”).

2. Facts of the prosecution case are that on 03.08.2015, a written complaint was moved alleging therein that victim (sister of the complainant) left the house without informing the family members and despite making of search to look out of her whereabouts, no clue could be traced. It is also stated by informer/complainant that at that time, the age of victim was about 17 years. On the basis of this complaint, a formal F.I.R. was registered and investigation was started. During investigation, on 11.08.2015, the victim was produced before the Court and her statement under Section 164 Cr.P.C. was recorded on 15.08.2015 by the Judicial Magistrate, First Class. She in her statement implicated the respondents that she was taken away to Alwar (Rajasthan). Her marriage was performed forcibly with ***Tanish*** son of ***Maharam (respondent No. 2 herein)***.

After completion of necessary formalities of investigation, the report under Section 173 Cr.P.C. was presented by the prosecution for the commission of offences under Sections 363, 366-A, 343, 346, 506, 120-B IPC and Section 4/12 of the POCSO Act. Copies of challan were supplied to the accused free of cost and on the basis of *prima facie* case, the accused were charge-sheeted by the trial Court for commission of offences under Sections 363, 366-A, 346, 506, 120-B IPC and Section 4/12 of the POCSO Act.

To prove its case against the respondents, the prosecution has examined as many as Twenty One (21) witnesses, which are as under:-

“ ***Complainant as PW-1, Victim as PW-2, Dharambir as PW-3, E.S.I Jai Chand No.777, Draftsman as PW-4, Reshma W/o Ram Bhagwan as PW-5, A.S.I Kuldeep Singh No.792/JJR as PW-6, Ct.***

Subhash No.440/JJR as PW-7, H.C. Manjeet No.948 as PW-8, E.H.C. Madan Pal No.1081/JJR as PW-9, Rajbir Singh, Head Master, Indian High School, Sulodha as PW-10, Dr. Jagjeet Singh, M.O.G.H. Jhajjar as PW-11, P/Insp. Meena Kumari as PW-12, H.C. Sunil Kumar No.541/JJR as PW-13, Dr. Niharika, M.O.G.H. Jhajjar as PW-14, S.I. Daya Chand No.422/RR as PW-15, Ct. Pardeep No.590 as PW-16, Ct. Ashwani No.228/JJR as PW-17, Insp. Ashok Kumar No.21 CPF as PW-18, A.S.I Parmila No.1060/JJR as PW-19, Ms. Shailza Gupta, S.D.J.M., Hodal as PW-20 and Sh. Jogender Singh, J.M.I.C. Kurukshetra (inadvertently written as PW 19) as PW-21.

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 trial Court has acquitted the respondents-accused for the commission of offences for which they have been charge-sheeted.

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

On careful examination of the statement of the prosecutrix, there is nothing on the record to suggest that she was allured by the respondent-accused and as a result of which she went with the respondent/accused. As a matter of fact, she in her statement recorded under Section 164 Cr.P.C. has stated that she herself went with the

respondent/accused with her own free will and wish and accused at no point of time ever used force to take her with him. She also stated that accused did not commit any bad act with her. Meaning thereby, the story of the prosecution that prosecutrix/victim was raped by the respondent/accused has to be belied. Interestingly, the prosecution has failed to prove that at the time of alleged incident, the prosecutrix/victim was running less than 18 years of her age, on the basis of which, it can be said that the provisions of POCSO Act are also not attracted.

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 19, 2019

'dk kamra'

(LALIT BATRA)
JUDGE

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