

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

**CRM-A No. 3772-MA of 2018 (O&M)
Date of Decision: 11.12.2019**

State of Haryana

..... Appellant

Versus

Ayyub and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present: Ms. Shubhra Singh, Additional Advocate General, Haryana
for the applicant-appellant/State.

JASWANT SINGH, J.

CRM No. 44830 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 **222 days** in filing the criminal appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay of **222 days** in filing the application for grant of leave to criminal appeal is condoned.

Application stands **disposed of** accordingly.

CRM-A No. 3772-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 Appeal against the judgment of acquittal dated 12.01.2018 passed by learned Additional Sessions Judge, Mewat, whereby all the respondents (*Ayyub, Talim, Jafru, Mubarik @ Mubba, Ali Mohammad, Riyaz @ Riyazuddin, Arif and Hasan Mohammad / respondent Nos. 1 to 8,*

respectively) have been acquitted of the charges under **Sections 148, 332, 353, 186, 188 & 307 read with Section 149 of Indian Penal Code (in Short IPC); Sections 135, 135-A of Public Representation Act and Section 3 of Prevention of Damage of Public Property Act.**

2. Tersely put the facts of the prosecution case are that an F.I.R. had been registered on the basis of the information given by **PW-2 / complainant (Naved Hasan)**, Driver of the City Magistrate, Nuh, to the effect that on 10.01.2016, his Officer (City Magistrate) was on the Election duty and during Election duty, an information was received that riots took place in village 'Lungikalan'. On receiving this information, City Magistrate Nuh, ASP Sh. Deepak, DSP Vivek Chaudhary, DSP Sh. Ratandeep and other police officials rushed to the polling venue, and thereby made a request to the crowd to go away from the Election process. Moreso, City Magistrate, Nuh, himself requested the crowd to leave the place of Election and not to disturb the Election process. However, the crowd, which was headed by one **Ayyub son of Sh. Ashraf** in a furious mood, started shouting and pelting stones on the Government officials and also smashed the windowpanes of the Government vehicles. The Government officials were attacked by the mob headed by '**Ayyub**' in such a manner to kill them and in these circumstances, the police has challaned all the respondents for the commission of offences under **Sections 148, 332, 353, 186, 188 & 307 read with Section 149 of Indian Penal Code and Sections 135, 135-A of Public Representation Act and lastly under Section 3 of Prevention of Damage of Public Property Act.** Since the case under **Section 307 of IPC** is triable by the Court of Sessions, as such, the

Court of *Judicial Magistrate Ist Class* committed the case to the Court of Sessions and the Court of Sessions, finding a *prime facie* case, charge-sheeted all the respondents for the commission of offences under **Sections 148, 332, 353, 186, 188 & 307 read with Section 149 of Indian Penal Code and Sections 135, 135-A of Public Representation Act and under Section 3 of Prevention of Damage of Public Property Act**, to which, they pleaded not guilty and claimed trial.

To prove its case against the respondents, the prosecution has examined the following **fifteen (15) witnesses:-**

“ **ASI Deep Chand** as PW-1, **Complainant-Naved Hasan** as PW-2, **Deepak Gehlawat** as PW-3, **Dharampal Draftsman** as PW-4, **Sureh Kumar Chahal**, SDM, Palwal as PW-5, **SI Balwant Singh** as PW-6, **Inspector Vijay Anand** as PW-7, **SI Vijay Pal** as PW-8, **Shehjad** as PW-9, **Bhaddan Lal** as PW-10, **Ct. Mahesh** as PW-11, **HC Amar Singh** as PW-12, **Inspector Devender Singh** as PW-13, **Hardutt** as PW-14 and **DSP Vivek Chaudhary** as PW-15. ”

On completion of prosecution evidence, the statement 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. Chance of defence was given to accused/respondents, but no defence evidence was produced by the respondents/accused.

On the basis of weak evidence produced by the prosecution against the respondents/accused, they have been acquitted of the charges for

the commission of offences under **Sections 148, 332, 353, 186, 188 & 307 read with Section 149 of Indian Penal Code and Sections 135, 135-A of Public Representation Act and under Section 3 of Prevention of Damage of Public Property Act.**

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

We have examined the statement of **PW-2 (Naved Hasan)** thoroughly and he has totally failed to identify any of the assailants and as such, it can be said that in the absence of proving the identity of assailants, the prosecution has not proved its case beyond doubt. The Trial Court has observed in the impugned judgment that none of the prosecution witnesses could identify the assailants those, who pelted the stones on the Government officials. In the absence of holding of Test Identification Parade and without knowing of the prosecution witnesses to the assailants earlier to the incident, it can be said that it is a case of mistaken identity.

As such, the Trial Court, in its impugned judgment, has rightly given the benefit of doubt to all the respondents for not establishing their identity.

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 kind of interference in the impugned judgment is made out.
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

December 11, 2019
'dk kamra'

(SANT PARKASH)
JUDGE

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