

CRM-A-2320-MA-2016

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

**CRM-A-2320-MA-2016
Date of Decision: 14.02.2020**

Digamber

... Petitioner

Versus

Kehar Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Ms. Tanika Goyal, Advocate for
Mr. Kunal Dawar, Advocate,
for the petitioner.

HARNARESH SINGH GILL, J.

CRM-40547-2016

This is an application under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay of 24 days in filing the application seeking special leave to appeal.

Heard.

Taking into consideration the contents of application, which are supported by an affidavit, the present application is allowed. The delay of 24 days in filing the application seeking leave to appeal is condoned.

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This is an application under Section 378(4) Cr.P.C. for grant of special leave to appeal against the judgment dated 08.08.2016 passed by the learned Judicial Magistrate Ist Class, Hodal, vide which the respondents have been acquitted of the charges framed against them.

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Applicant-complainant, Digamber filed a complaint under Sections 148, 149, 323, 325, 342, 385, 387 and 506 IPC. It was averred in the complaint that on 09.06.2010 at about 6.00 P.M., the complainant and Hukam were coming to their village on a motor-cycle; that when they reached near canal of village Andhop, then accused Kehar Singh, Gyan Singh, Ashok Kumar, Arun and Devender, had restrained them; that Ashok was having a countrymade pistol, Kehar Singh, a hockey stick and Gyan Singh, Arun and Devender were having sticks; that all of them had inflicted injuries on the person of the complainant; that Hukam Singh had tried to save the complainant from the clutches of the accused persons and raised alarm, whereupon Thakur Lal and Netram rushed to the spot; that Kehar Singh and Gyan had also taken away Rs.1800/- and gold chain and thereafter, the accused had run away from the spot.

The complaint was initially dismissed on 12.11.2010. However, the revision petition filed by the applicant was allowed, vide order dated 08.07.2011 while setting aside the order dated 12.11.2010.

Thereafter, the accused had been summoned to face trial under Sections 148, 149, 323, 325, 342 and 506 IPC, vide order dated 23.04.2005. On finding a prima facie case, charges were framed against the accused under Sections 148, 149, 323, 342 and 506 IPC, to which they pleaded not guilty and claimed trial.

The trial Court after taking into consideration the arguments raised by the counsel for the respective parties, acquitted the respondents-accused of the charges.

Aggrieved of the judgment of acquittal of the respondents, the

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applicant has preferred the present application seeking special leave to appeal.

I have heard learned counsel for the applicant and with her able assistance, have gone through the judgment of the trial Court.

While acquitting the respondents, the trial Court has drawn the following conclusion:

- (i) That there was no injury on the person of Hukam Singh even though he had tried to save the complainant, who had been attacked by 5-7 persons.
- (ii) That there is a discrepancy in the statements of complainant and CW 1 Hukam Singh in respect of snatching of gold chain by Gyan Singh or by Kehar Singh and Gyan Singh.
- (iii) That CW 4 Net Ram stated that when they reached the place of occurrence, the accused persons had not inflicted any injury to the complainant.
- (iv) That CW 4 Net Ram alongwith present complainant-Digamber, Hukam Singh was an accused in a case under Section 307 IPC, but had been found innocent later on.
- (v) That Charan Singh had not been called as a witness, even though Hukam Singh, Net Ram and Thakur Lal stated that the complainant had been confined in his room, who was present at the spot.
- (vi) That complainant-Digamber Singh admitted in cross-examination during pre-charge evidence that the police

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had reached the spot after one hour and he had been handed over to police and thereafter a case under Section 307 IPC had been registered.

(vii) That the report Ex.DX sought by the court under Section 202 Cr.P.C. shows that an FIR had been registered against complainant-Digamber and the present complaint had been filed as a counter-blast to the said FIR. Moreover, complainant-Digamber and his companion, Hukam Singh, had been held guilty for committing the offences punishable under Sections 25 of the Arms Act and Section 307 IPC, respectively.

Thus, taking into consideration the evidence on record, the trial Court has rightly arrived at a conclusion that documents and oral testimony of the complainant were not sufficient to prove the guilt of the accused beyond the reasonable doubt.

It is well settled by now that if the view adopted by the Court while acquitting the accused is a reasonable one and the conclusion reached by it had its grounds well set out on the material on record, the acquittal may not be interfered with. A Division Bench of this Court in case State of Haryana v. Satbir, 2013(7) R.C.R. (Criminal) 1490, has held as under:-

“There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in

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view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience.”

Still further, Hon’ble Supreme Court in State of Rajasthan Vs. Shera Ram @ Vishnu Dutta, Criminal Appeal No. 1502 decided on 1.12.2011 has held that if the two views are possible on the evidence adduced in the case, then one favourable to the accused, may be adopted by the Court. It was held as under:-

“12. There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal, the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where inference is imperative

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and then ends of justice so require and it is essential to appease the judicial conscience.”

Learned counsel for the applicant could not point out any misreading or misinterpretation of the evidence so as to warrant interference by this Court. It could not be pointed out that the conclusion drawn by the trial Court was arrived at by recording any perverse finding. In my opinion, the findings recorded by the trial Court are based on the evidence led by the parties.

From the above, I do not find any ground to grant special leave to file appeal. Therefore, finding no merit in the present application, the same is dismissed. Special leave to appeal is declined.

14.02.2020

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Note:	Whether speaking/reasoned	:	Yes/No
	Whether reportable	:	Yes/No