

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

CRM-A No.2841 of 2019 (O&M)

Date of Decision: 19.02.2020

State of Haryana

....Applicant

Versus

Mukesh

....Respondent

**CORAM :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present:- Mr. S.S. Pannu, D.A.G., Haryana
for the applicant.

DAYA CHAUDHARY, J.

The present application has been filed by applicant-State of Haryana under Section 378(3) Cr.P.C for grant of leave to appeal against the judgment of acquittal dated 20.05.2019 passed by learned Additional Sessions Judge, Jhajjar, whereby, accused respondent Mukesh, who faced trial in case FIR No.215 dated 22.06.2010 registered under Sections 148, 149, 302, 307, 449, 120-B IPC and Sections 25/27/54/59 of the Arms Act at Police Station, City Bahadurgarh, has been acquitted.

There is delay of 111 days in filing the present application for grant of leave to appeal.

Briefly, the facts of the case, as made out in the present application, are that said FIR was registered at the instance of complainant-Dharambir (PW5) against accused persons. Respondent-Mukesh was one of the accused. All accused faced trial, out of which, some were convicted and some were acquitted. Respondent-Mukesh was acquitted of the charge by the judgment of trial Court dated 20.05.2019 passed by the Additional Sessions Judge, Jhajjar.

The present application has been filed against the judgment of acquittal passed by the trial Court with delay of 111 days. An application for condonation of delay has also been filed which is supported by an affidavit of Sh. Ajaib Singh, Deputy Superintendent of Police, Bahadurgarh, District Jhajjar. The reason for condonation of delay mentioned is that the opinion of District Attorney, Jhajjar was sought and after obtaining opinion and on completing procedural formalities, the application was filed and hence, delay of 111 days has occurred. The details of dates as to when the file was submitted and when opinion was given, have not been mentioned. The formalities which were required to be completed have not been mentioned. The application is totally vague. Nothing has been mentioned as to when the file was sent for legal opinion and when it was returned. The application does not disclose any sufficient ground to condone the delay in filing of the application for leave to appeal. The judgment of acquittal was passed on 20.05.2019 and an application for leave to appeal was filed on 22.11.2019 but the time period in between has not been properly explained.

Article 114 of the Schedule to Limitation Act, 1963 provides that an appeal from an order of acquittal by the State is to be filed within a period of 90 days from the date of the order appealed from. While inserting the provision, the Legislature, of course, had the internal administration of the State in mind. Previously the limitation period was 6 months, but subsequently, it was decreased to 3 months. The Law Commission of India in its 3rd Report, on which the Limitation Act, 1963 was based and introduced in the Parliament, had observed that even this period is too long. The relevant portion is reproduced as under :-

"166. Article 157 provided a period of 6 months limitation for an appeal against an order of acquittal. The recent Act

amending the Criminal Procedure Code has substituted a period of 3 months for 6 months. We do not propose any alteration of that period though we think that even the present period is too long to enable the State to make up its mind to file or not to file an appeal against an order of acquittal. ..."

The observation of the Apex Court in case ***Postmaster General Vs. Living Media India Ltd., (2012) 3 SCC 563*** is as under:-

"29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay."

Same view was taken in another judgment of case ***State Vs. Harihar, 2016 SCC Online Del 2354*** and petition was dismissed on the ground of delay holding that reasons were mechanical and stereotyped.

In our view, the reason/ground for condonation of delay as mentioned in the application has not specifically been explained. The department was well aware that the period of limitation for filing leave to appeal was 90 days but it did not bother to know as to when the file was sent and what was its status.

It has been observed in various cases that State does not file appeal within the stipulated period and takes defence of procedural delay in obtaining approval/opinion. The State does not have the right to file appeals at belated stage on the ground of procedural delay. The State is expected to expedite the matter in case they want to prefer appeal against judgment of

acquittal or conviction. No proper explanation has been given by the State which has caused delay in filing the instant appeal.

The Legislature was wise enough while enacting Section 378 Cr.P.C. by giving 6 months time to the State to prefer an appeal against judgment of conviction or acquittal as the case may be. The procedural delay as claimed by the prosecution cannot be a ground to condone the delay. If any delay is caused, the person responsible for the same is to be ascertained and departmental action is required to be taken against him. Only under the exceptional circumstances, the delay, if any, caused by the State in filing the appeal is to be condoned in case the delay of each and every day is properly explained and is supported by documentary evidence.

Accordingly, we find no ground to condone the delay and the application for condonation of delay is dismissed.

On merits also, there is no convincing argument in the application for grant of leave to appeal.

Learned counsel for the applicant has challenged the judgment of acquittal on the ground that co-accused of the respondent has been convicted but the evidence qua respondent has not been appreciated properly. It has also been argued that the trial Court has not believed the statement of PW-5 Dharambir and eye witness (PW-6) Surender. As per statement of complainant PW-5 and eye witness PW-6, accused Mukesh was alleged to be present at the place of occurrence and he was involved in the murder of Rakesh @ Kala along with other accused. Learned counsel also submits that the involvement of respondent was there in the commission of offence as he was seen while standing at the main gate along with other accused. The pistol which was used in the commission of offence

was shown to accused Mukesh and he identified that it belonged to him. Said pistol was handed over to PW28. One witness, namely, Jitender also disclosed the factum of conspiracy. Learned counsel also submits that accused Mukesh suffered a disclosure statement (Ex.PW35/A) regarding the conspiracy entered into between the accused and Taqdir Singh. The disclosure statement which led to the recovery of pistol has not been relied upon by the learned trial Court.

Learned State counsel also submits that the evidence by way of statement of witnesses have not been taken into consideration, whereas, the involvement of accused Mukesh has been proved on record. He was not only present near the place of occurrence but was fully armed and pistol was also used in the commission of offence. He was involved in hatching the conspiracy as well as in the commission of offence. Learned trial Court has framed the issues, which are as under :-

- (1) Whether the present accused Mukesh was present in the hospital on the date of occurrence i.e 22.06.2010 or not?*
- (2) Whether sanction of prosecution of Mukesh was obtained or not?*
- (3) Regarding hatching the conspiracy by the accused along with Mukesh Kumar.*
- (4) Regarding recovery of motorcycle and car from Mukesh Kumar.*
- (5) Whether threatening was advanced by Mukesh or not?*
- (6) Whether the live cartridge along with arm license was ever used by the present accused or not?*
- (7) Final order.”*

On perusal of findings recorded by the trial Court, it is apparent that the CCTV footage was played and shown to PW5 and PW12. However, accused Mukesh was not seen in the CCTV footage. He was not seen even out of the hospital also. As per statements of PW5 and PW6, there is only

one entry gate and one exit gate and Mukesh was not seen neither at the entry point nor at the exit gate. As per statement of PW-5, accused Mukesh was standing in the *varandah* where CCTV footage was not affixed. As per CCTV footage, all the four assailants namely, Kuldeep alias Bhandari, Anil, Jyoti Parkash and Arun were seen at 11.06.35, thereafter at 11.07.35 to 11.08.31. Kuldeep alias Bhandari, Anil, Jyoti Parkash and Arun were seen while going into the Deluxe room and all of them were seen to be coming back. Thereafter again, all the accused were seen while going into the Deluxe room carrying their fire arms and also while coming back. However, Mukesh was not seen while going as well as while coming. Neither the presence nor involvement of accused Mukesh has been proved in the commission of offence. The Investigating Officer while appearing as PW-12 has stated that Mukesh was not seen while entering and coming out of the hospital. It was further stated by him that even no vehicle was seen parked in front of the hospital. No empty cartridge was even recovered which creates doubt not only with regard to involvement of respondent Mukesh but even his presence.

With regard to role of accused Mukesh in hatching the conspiracy along with all accused, it has been held by the trial Court that as per statement made by PW-5, namely, Dharambir, while appearing in the witness box, on 22.06.2010 at about 3.00 a.m., Jitender son of Sh. Jagdish disclosed to him at his residence that while he was passing through the street in the evening time, Jitender had overheard voices of Yogender, Takdir, Shamsheer, Surajbhan, Manoj and Rohtash relating to hatching the conspiracy of killing Rakesh alias Kala but said Jitender had not been examined as a prosecution witness. There is no other witness except

Jitender, who is witness to the conspiracy. However, said Jitender appeared as DW1 in favour of the accused and has stated that he had gone to Agra in the morning on 21.06.2010 to bring one of the Army person, namely, Harender. He has further stated that he stayed overnight and returned in the Village in the evening on 22.06.2010. Thereafter, he came to know about the murder of Rakesh alias Kala. He has also stated that he never met Dharambir and did not see any accused person while planning any conspiracy at the residence of Yogender. PW-5 has not named Mukesh in hatching the conspiracy. It has also been held that Mukesh was neither the candidate nor the supporter of any other candidate. Accordingly, neither his involvement in the commission of offence nor part in conspiracy has been proved. A specific finding has been given by the trial Court that Mukesh was shown to have fled away while driving Santro car but neither motorcycle nor any Santro car was recovered from the possession of present accused Mukesh. Learned trial Court has also given a specific finding that accused was not named neither by the complainant nor by PW-5 stating him to be a part of conspiracy. As per FSL report, the weapon was found to be in a working condition but none of the live cartridges were ever used by Mukesh in the commission of offence. Accordingly, the prosecution has failed to prove the involvement of accused Mukesh in the commission of offence and as such, by giving the benefit of doubt, he has rightly been acquitted.

As per recent judgment of the Apex Court in case ***Munishamappa and others Vs. State of Karnatka 2019 (1) Scale 721***, it has been held that High Court should not interfere with the order of acquittal merely on the ground that two views are possible. The interference

should only be in such cases where appreciation of evidence by trial Court is capricious or its conclusions are without evidence or acquittal is not in accordance with law or the approach of trial Court has led to miscarriage of justice. Similarly, it has been held in judgment of Division Bench of this Court in case ***Ranjit Kaur Vs. State of Punjab and others 2008 (22) RCR (Criminal) 848*** that in case two views are possible, the view taken by trial Court in favour of the accused person while recording acquittal, be taken as possible view.

Hon'ble Apex Court in a case reported as ***2016 SCC OnLine SC 834 Madathil Narayanan & Ors. V. State of Kerala & Anr.*** held as under :-

“It is a well settled principle of law that if two views are plausible, the view which goes in favour of acquittal has to be adopted. This legal principle has been reiterated by this Court in the case of Arulvelu v. State rep. by the Public Prosecutor. In the case of Bindeshwari Prasad Singh @ B.P. Singh v. State of Bihar (now Jharkhand), this Court has held that in the absence of any manifest illegality perversity or miscarriage of justice, the order of acquittal passed by the Trial Court may not be interfered by the High Court in exercise of its appellate jurisdiction. The aforesaid view has further been reiterated by this Court in the following two cases viz. Rathinam @ Rathinam v. State of Tamil Nadu and Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra.”

Hon'ble the Apex Court in the case of ***Murugesan and others Vs. State through Inspector of Police 2013 AIR (SC) (Cri) 126*** has laid down certain principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal and the same are reproduced as under:-

- (1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.
- (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
- (3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances",

"distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

In view of the facts as well as law position as mentioned above, we are of the considered view that the learned trial Court has passed a detailed reasoned judgment after considering the statements of witnesses and has rightly reached to the conclusion and acquitted accused Mukesh.

Accordingly, we do not find any compelling reasons to deviate from the findings recorded by the learned trial Court. In our opinion, there is no perversity in the judgment of trial Court and accordingly, the application for leave to appeal is hereby dismissed not only on the ground of delay but on merits as well.

(DAYA CHAUDHARY)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

19.02.2020
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No