

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

(217)

CRM-A-347-MA-2016

Date of decision: 23.03.2022

Kamlesh Devi

...Appellant

Versus

Kelan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. J.S.Hooda, Advocate
for the applicant-appellant.

...

SUVIR SEHGAL, J. (ORAL)

CRM-6250-2016

By way of present application filed under Section 5 of the Limitation Act, 1963, the applicant-appellant seeks condonation of delay of 675 days in the filing of the leave to appeal.

Counsel for the applicant-appellant submits that criminal complaint filed by the applicant-appellant was decided by the learned Sub Divisional Judicial Magistrate, Hathin vide judgment dated 11.02.2014, which was challenged before the learned Additional Sessions Judge-I, Palwal by filing appeal, within the prescribed period of limitation. However, in view of the provision laid down in Sub-Section 4 of Section 378 of the Code of Criminal Procedure, 1973 (for short “the Code”), the Appellate Court held that

the appeal is not maintainable. Counsel submits that immediately thereafter, present application for leave to appeal has been instituted before this Court with a delay of 675 days.

Having considered the submissions of the counsel for the applicant-appellant, this Court is satisfied with the explanation given in the application, which is allowed.

Delay of 675 days in the filing of the application seeking grant of leave is condoned.

CRM-A-347-MA-2016

Present application has been filed under Section 378 (4) of the Code for grant of leave to file appeal against judgment of acquittal dated 11.02.2014 passed by learned Sub Divisional Judicial Magistrate, Hathin, whereby all the accused-respondents have been acquitted for offences under Sections 323, 354, 452, 506 read with Section 34 of the Indian Penal Code, 1860.

Brief facts leading to the filing of the present case are that a complaint was instituted by the applicant against the respondents on the allegation that on 26.09.2007 at about 08.00 p.m. when she was alone at her home, the accused in furtherance of a common intention scaled the wall and entered her house. Accused-Kelan and Raju caught hold of her and tried to outrage her modesty. On hearing the commotion, her mother-in-law, Somwati, came on the spot, but the accused caught her by her hair and tried to drag her out of the house. Meanwhile her brother-in-law came, who was hit with a stick by Sumer. The complainant raised an alarm and many people gathered at the spot. Her husband and father-in-law also

reached there. The accused managed to flee while threatening the complainant and her family members. The matter was reported to the police, however, no action was taken.

After considering the preliminary evidence, the Trial Court vide order dated 22.01.2008 summoned the accused for facing trial. In her pre-charge evidence, the complainant examined herself as CW-1, Umed stepped into the witness box as CW-2 and Jagat as CW-3. Vide order dated 17.10.2013, the Trial Court framed charge under Sections 323, 354, 452, 506 and 34, IPC against the accused. The witnesses examined in pre-charge evidence were cross-examined and CW-4-Somwati was examined. The evidence of the complainant was closed after she tendered some documents. In their statements under Section 313 of the Code, the accused pleaded false implication and claimed innocence. Although, they opted to lead defence evidence, but closed the same without leading any evidence.

Vide judgment dated 11.02.2014, the Trial Court acquitted the accused-respondents by holding that the version of the prosecution is doubtful and does not inspire confidence. The accused were acquitted of the charge leveled against them. Being aggrieved, the applicant has filed the present application under Section 378 (4) of the Code seeking leave to appeal.

Counsel for the applicant has argued that the Trial Court has adopted a perverse approach while recording the acquittal of the accused-respondents and submits that there was sufficient evidence available before the Trial Court to hold the accused guilty, which has not been appreciated in the right perspective.

Having considered the arguments addressed by counsel for the applicant, this Court is of the view that the present case is not a fit one for granting leave to file appeal for reasons more than one, which are given as under:-

Firstly, the incident is alleged to have taken place on 26.07.2007 at about 08.00 p.m. Though, it has been claimed in the complaint that the occurrence was reported to the police but no material could be brought on the record to substantiate this fact. The complaint has been instituted before the Judicial Magistrate on 05.12.2007 and there is no reason or explanation has been assigned for the delay in approaching the Court.

Secondly, it has been stated by the witnesses that as a result of the alarm raised by the complainant, a large number of people gathered at the spot, however, the witnesses have failed to give the name of even a single person, who was an eye-witness to the incident.

Thirdly, CW-3, Jagat is alleged to have received an injury with a stick on his head. He has, however, failed to produce any medical record to support the allegation of the injury.

Fourthly, it has been admitted by the witnesses that the accused are living in the neighborhood and there is a dispute between them regarding a chabotra and a tank. It has been admitted by the complainant that the tractor of the accused had hit their chabotra and the tank was damaged, as a result of which an altercation took place between them.

Fifthly, all the complainant witnesses are closely related to each other and there is no independent corroboration of the alleged incident.

Lastly, though the complainant has alleged that her clothes were torn by the accused, but she has failed to produce them during the course of her examination.

In his arguments, counsel for the applicant could not bring out any new fact nor could he point out any misappreciation of evidence by the Trial Court. Counsel for the applicant has failed to show any error in law or on facts on the basis of which the judgment under challenged can be interfered with.

In view of the above discussion, this Court is of the opinion that the Trial Court has appreciated the entire evidence in its right perspective and has rightly held that the prosecution has failed to prove its case against the accused-respondents beyond any reasonable doubt. No interference is called for in the judgment passed by the Trial Court.

This application is without any merit and is hereby dismissed.

Leave to appeal is declined.

(SUVIR SEHGAL)
JUDGE

23.03.2022
Pardeep

Whether speaking/ reasoned	Yes
Whether Reportable	Yes