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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-A-547-2022 (O&M)  
Date of Decision: 15.11.2022

HARJINDER KAUR

..... Petitioner

*Versus*

BIKRAMJIT SINGH AND OTHERS

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present : Mr. Varlin Garg, Legal Aid Counsel  
for the applicant-appellant.

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**JAGMOHAN BANSAL, J. (Oral)**

**CRM-35617-2022**

Application is for condonation of delay of 51 days in filing  
the appeal.

Keeping in view the averments made in the application, the  
application is allowed and delay is condoned.

CRM stands disposed of.

**CRM-A-547-2022**

1. The appellant through instant application under Section 378(4) Cr.P.C. is seeking grant of special leave to appeal against order dated 27.11.2018 whereby learned Judicial Magistrate Ist Class, Indri has dismissed complaint of the appellant, filed under Section 138 of Negotiable Instruments Act (for short, 'NI Act') and further acquitted the accused/ respondent.

2. The brief facts emerging from record are that the appellant is resident of village Singarpur. The appellant filed a complaint before Trial Court alleging that on 20.10.2010 at about 12/1 AM Bikramjit Singh,

Bachittar Singh, Satnam Singh, Gurmej Singh, Jagir Singh, Balkar Singh, Buta Singh, Suba Singh, Sarabjit Kaur, Jit Kaur, Dalbir Kau and Jas Kaur armed with different weapons forcibly entered into the house of the complainant and fled with a sum of Rs.20,000/- and 3 tola gold after breaking the lock of a trunk lying in their house. The complaint of the appellant came up for consideration before learned Judicial Magistrate 1<sup>st</sup> Class, Tarn Taran, who vide order dated 06.12.2019 has dismissed the same holding that there is no merit in the complaint.

3. Learned Trial Court while dismissing complaint has recorded findings as below:

*“9. Further, the defence counsel has submitted that the complainant has filed the present false complaint against the accused under the impression that the Gram Panchayat of Village is constructing the street on the asking of the accused party. It is further submitted that the street was already in the existence but father of the complainant had blocked the same and the Gram Panchayat now wants to reopen it as this street leads to Phirni of the Village. The complainant during her cross-examination has admitted that this street leads to the Prirni of the Village. But she denied that her father had blocked this street falling in khasra no.71. But as has already been said the complainant has not produced any document to show that the land over which street is to be constructed, falls under the ownership of the father of the complainant, the plea of the defence counsel that the land over which the street was to be constructed falls under the khasra no.71 which is the ownership of the gram Panchayat is found probable.*

*Furthermore, otherwise also, no destruction of any wall of the house of the father of the complainant is proved on file. The entire story put forth by the complainant is found concocted one. No independent witness is examined by the complainant to prove her version. Both CW1 and CW3 are close relative of the complainant. As per version of CW1, the house is in abadi area and number of persons had gathered at the spot but despite this the complainant has not examined any independent witness to put more strength in her version, CW1 Gurmej Singh has nowhere stand that he saw the accused while demolishing the wall of the house. He stated that he saw the accused when they were leaving the spot. He also did not know the name of the accused and the he was told by the complainant about the names of the accused. Further, number of discrepancies have been found in the statements of all Cws. CW2 has stated that they did not raise any alarm when the accused locked them in a room and no neighbouror came at the spot. Whereas CW1 to CW3 have stated that number of persons had gathered at the spot. Further, CW2 Complainant/Harjinder Kaur has stated that she had made a telephonic call to CW1 Gurmej Singh about the alleged occurrence. Whereas Gurmej Singh during his statement stated that he did not receive any call from CW2 Harjinder Kaur about the alleged occurrence. Rather he received telephonic call of CW3 Rajwant Kaur.*

*10. Further, the Id defence counsel has submitted that the present complaint is a counter blast of civil litigation against the complainant. The Complainant during her cross-examination has admitted that accused Sarabjit Singh has filed one complaint*

*against the brother of the complainant.*

*11. Further, the conduct of the complainant to file present false complaint against the accused is also reflecting from the fact that one of the accused Bikramjit Singh who is army personnel was not even present in his Village and he was on duty on the day of alleged occurrence. But the complainant has also got him involved in his occurrence. In order to show this fact the defence counsel has placed on record statements Ex.DW2/A, Ex.DW2/B, Ex.DW3/C that is leave details of the accused Bikramjit Singh, which authenticated that accused Bikramjit Singh proceeded on leave from 22.10.2010 to 30.10.2010.”*

4. Learned counsel for the appellant submits that there was sufficient evidence against the respondent still Trial Court without appreciating evidence led by appellant has acquitted all the respondents/accused. A civil dispute qua house of the father of the complainant was pending. The father of the complainant had filed civil suit seeking permanent injunction against respondents.

5. I have perused the record and heard arguments of the appellant. The present application seeking special leave to appeal is bereft of merit and deserves to be dismissed.

6. Hon'ble Supreme Court in a catena of judgments while dealing with scope and powers of the appellate court in dealing with an appeal against an order of acquittal has elucidated:

(i) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(ii) 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.

(iii) 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.

**(iv) 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.**

(v) 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.

7. The appellant is seeking special leave to appeal against judgment and order whereby trial court has acquitted the respondent. It is settled law that granting of special leave to appeal against acquittal is a discretionary power. However, such power has to be exercised judiciously and the Courts are not permitted to exercise the same at

whims or fancies and arbitrarily. Arbitrariness has always been held anathema to exercise of any power.

8. In view of the fact that civil dispute was pending between father of complainant and respondent; the Panchayat had passed resolution against complainant and her family members; the Panchayat had approached the police for help because appellants were creating hurdle in construction of street and having regard to the findings recorded by trial court including accepted legal position, this Court is of the considered opinion that in the case at hand there is no infirmity or irregularity in the impugned order whereby trial Court has acquitted the respondent. Accordingly, this Court fully agrees with the finding recorded by trial Court. The impugned judgment and order being speaking, based upon correct appreciation of facts, applicable law & judicial precedents and well-reasoned needs no interference of this Court. Therefore, request of the applicant seeking permission special leave to appeal is hereby rejected. In the result, application seeking special leave to appeal and consequently, appeal is dismissed.

( JAGMOHAN BANSAL )  
JUDGE

15.11.2022  
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|---------------------------|---------------|
| Whether speaking/reasoned | Yes/No        |
| <i>Whether Reportable</i> | <i>Yes/No</i> |