

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-418-2020(O&M)

Decided on: 02.05.2022

State of Haryana

.....Applicant-Appellant

Versus

Amar Singh @ Gur Amrit Singh and othersRespondents

CORAM HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms.Tanisha Peshawaria, DAG, Haryana
for the applicant-appellant.

SANDEEP MOUDGIL, J

CRM-9145-2020

1. The present application under Section 5 of the Limitation Act has been filed for condonation of 123 days delay in filing the appeal.

2. The explanation given for aforesaid delay is confined to the date of opinion given by the District Attorney dated 17.10.2019 vide memo no.2185 and thereafter, via office of Superintendent of Police, Sirsa, the case file movement has been shown to the office of

District Magistrate, Sirsa, who vide memo no.1015/ADA dated 20.11.2019, sent the case to the office of learned Advocate General, Haryana for further opinion.

3. However, a perusal of the pleadings in para no. 6 of the application depict that the then Additional Chief Secretary, Administration of Justice Department, Haryana, had already decided to file an appeal against the judgment of acquittal dated 07.08.2019. Still, the application under Section 378(3) Cr.P.C alongwith grounds of appeal to impugn the judgment of acquittal dated 07.08.2019, came to be filed on 29.02.2020.

4. The learned State counsel could not explain any further with regard to the inordinate delay of 123 days satisfactorily as there is no dispute to the legal proposition that delay of each day is to be explained to the satisfaction of the Court showing that the circumstances were beyond the control of the authorities. The affidavit of Sh.Jagdish Kumar, Deputy Superintendent of Police, Ellenabad fails to impress by usual explanation wherein the file consumed almost six months due to considerable degree of procedural red tape in the process. Such inordinate delay on the part of the State is neither bonafide error nor unintentional and in the light of such

assertions, the State Governments cannot be absolved of its obligation to ensure that it perform the duty with diligence and commitment. The principle to be borne in mind is qua the equity and justice which might have been acquired by the accused due to such huge delay on the part of the State Government which did not act with due diligence and had been negligent.

5. We are, therefore, not convinced with the submissions made by the learned State counsel and after giving thoughtful consideration found that the appellant falls woefully short of making out any sufficient cause and therefore, having appreciated the record and the law, the application for condonation of delay of 123 days is dismissed.

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6. However, learned State counsel, pursued this Court to grant Leave to Appeal on the premise that the case is fit to be entertained on merits against the judgment of acquittal dated 07.08.2019, whereby the respondents - accused persons have been acquitted of the offences under Sections 120-B, 363, 366-A, 376, 511, 506 IPC and Sections 4 and 18 of the Prevention of Children from Sexual Offences Act, 2012 (hereinafter referred to as the POCSO

Act).

7. To adjudicate as to whether the State is entitled for Leave to Appeal in the instant appeal, it would be in the fittest of circumstances to examine the record of the trial as well as the findings recorded by the Court below while acquitting the accused before finally adjudicating the right of the State to seek Leave to Appeal.

8. The facts narrated in the complaint submitted by Gulzar Singh – complainant suggest that at about 07:00 pm on 27.12.2016, Ninder Kaur wife of Jassa Singh and Veena daughter of Jassa Singh took the victim / daughter of the complainant to their house, who did not come back till 08:00 pm. After waiting for some time, the complainant made enquiries and went to the house of Ninder Kaur but was informed that his daughter had gone back immediately to her house and she do not know anything thereafter about the victim. On the basis of suspicion against Kaka Singh and Sonu Singh both sons of Joginder Singh and Amar Singh son of Jassa Singh, Ninder Kaur and Veena having enticed away his daughter aged 6 years, a complaint was made, on the basis of which formal FIR No.451 dated 31.12.2016, under Sections 120-B, 363, 366-A, 376, 511, 506 IPC

along with Sections 4 and 18 of the POCSO Act was registered at Police Station Rania, District Sirsa. Investigation in the case was got conducted by SI Sunita Rani and accused were arrested. The challan was presented and the case was committed to the Court of Sessions vide order dated 30.03.2017. After framing of the charge against all the accused under Sections 120-B, 363 and 366-A of IPC and against accused Amar Singh @ Gur Amrit Singh, under Sections 376 read with Sections 511 and 506 IPC along with Sections 4 and 18 of the POCSO Act, the trial commenced. As many as 16 witnesses were examined by the prosecution apart from documentary evidence brought on record as Ex.P/1 to Ex.P/35. The respondents – accused pleaded innocence and false implication in their respective statements under Section 313 Cr.P.C.

9. The prosecution contested the case on the strength of testimony of PW1 – father of the prosecutrix and PW2 – the prosecutrix against all the respondents – accused to have hatched criminal conspiracy to kidnap the victim – prosecutrix, who was below the age of 18 years from the lawful guardianship of her parents without their consent and the accused Amar Singh attempted to commit rape upon her. The prosecutrix alleged to have been

threatened as well with dire consequences to her life and attempted to commit penetrative sexual assault upon her.

10. We have minutely examined the testimony of the witnesses wherefrom the complaint Ex.P1 dated 31.12.2016 was preferred by the father of prosecutrix stating his daughter to be missing from the house from 27.12.2016 i.e after delay of 5 days. In the said complaint name of Kaka Singh and Sonu Singh was mentioned but both were not impleaded as accused in this case. In the statement under Section 161 Cr.P.C Ex.D1, the father of victim stated that Kaka Singh was named mistakenly whereas appearing as PW1 in the witness box this witness in cross examination stated that he suspected only two persons namely Kaka Singh and Sonu and the endorsement at point B and C in which name of accused Amar Singh is mentioned, was scripted by the Investigating Officer at the time of lodging the complaint. There is serious doubt to the initial stage of lodging the complaint itself as testified by PW7 ASI Vinod Kumar, who deposed that the complainant came to the Police Station with a typed complaint at about 07:00 pm on 31.12.2016 whereas PW10 ASI Subhash while appearing in the witness box gave third version to the effect that when he came to the Police Station alongwith HC Vinod

Kumar, the complainant was already present with the typed complaint Ex.P1.

In the statement of PW1 and PW2 as well material discrepancies have occurred, which were found to be sufficient to create serious doubt to the story of the prosecution.

11. The Court below after appreciating the evidence and catena of judgments, apart from the FSL Report Ex.P35 has recorded the finding to the effect that the entire evidence qua the accused facing trial so adduced by the prosecution, direct or indirect, in order to connect him with the offence in question of which he is charged, is not *ex-facie* trustworthy while passing the judgment of acquittal.

12. Having regard to the contentions made by the learned counsel for the State, this Court is of the considered view that in the light of settled principles of criminal jurisprudence, the guilt of accused has not been proved beyond doubt.

13. In these facts and circumstances as discussed hereinabove, considering the glaring discrepancies arising during the testimonies of prosecution witnesses and medical evidence and FSL report not actually corroborating the case of the prosecution, we do not find it a fit case where even on merits a case is made out for

granting leave to appeal.

14. Hence, the application under Section 378(3) Cr.P.C for grant of leave to appeal is dismissed on the grounds of delay and latches and also on merits.

(SANDEEP MOUDGIL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

02.05.2022

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Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No