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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-37387-2015 in/and
CRM-A-1864-MA-2015
Date of Decision: July 12, 2022

Jasbir Kaur .....Applicant-Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Sohrab Dhanda, Advocate
for the applicant.

.....

RAJESH BHARDWAJ, J.(ORAL)

CRM-37387-2015

The applicant has filed the present application under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condoning the delay of 27 days in filing the accompanying application for grant of Special Leave to appeal against the order dated 27.07.2015 passed by learned JMIC, Fazilka, acquitting accused-respondent No.2 of the charges framed against him under Sections 354, 342, 357, 504 and 506 IPC.

It has been contended that the judgment was passed on 27.07.2015, the certified copy was applied on 14.08.2015, the same was prepared on 24.08.2015 and it was delivered to the applicant on 07.09.2015. The applicant was under the impression that the appeal would lie before the learned Sessions Court, Fazilka, however, when he approached the Court, he came to know that the same is maintainable before the Hon'ble High Court and thus, in the process delay of 27 days occurred in filing the application

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for grant of special leave to appeal. He submits that delay in filing the accompanying application for grant of special leave to appeal is neither intentional nor deliberate and if the same is not condoned and the application for grant of special leave to appeal is not heard on merits, then the applicant would suffer an irreparable loss.

In view of the submissions made by the counsel for the applicant, this Court finds it appropriate to condone the delay of 27 days in filing the application for grant of special leave to appeal.

Hence, the application is allowed. Delay of 27 days in filing the accompanying application for grant of special leave to appeal is hereby condoned.

CRM-A-1864-MA-2015

This is an application under Section 378(4) read with Section 482 Cr.P.C. filed by the applicant for grant of special leave to appeal against the order dated 27.07.2015 whereby respondent no.2-accused has been acquitted from all the charges framed against him under Sections 354, 342, 357, 504 and 506 IPC.

Learned counsel for the applicant has contended that respondent No.2-Daljit Singh is the brother-in-law (*Jeth)* of the complainant. He tried to molest her but she remained quite in order to save the dignity of the family. However, respondent No.2 did not mend his ways and kept on troubling her. On 15.06.2011, when the complainant went to her parental village, respondent No.2 met her at the bus stand, Abohar, and made obscene remarks against the complainant. On raising the alarm by the complainant, people gathered there whereupon he left the place. Thereafter

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from his phone, he called the complainant and entered into an obscene conversation with her. The complainant filed a written complaint to the Police Station City, Abohar, however, no action was taken. It is further alleged that on 20.07.2012, respondent No.2 alongwith other persons, all armed with weapons, came on cars and motorcycles and encircled the house of the complainant. The complainant and her husband could save themselves while remaining in their home. On 21.07.2012, a written complaint was moved before the SSP, Fazilka, which was marked to DSP. However, no action was taken on the same and hence the complainant filed the present complaint before the Court of learned Judicial Magistrate Ist Class, Fazilka.

In the preliminary evidence, complainant appeared as CW1 besides Ajit Singh, Manjit Kaur and Jaswinder Singh, who appeared as CW2 to CW4 respectively. On conclusion of the same, the accused were summoned to face trial for the offence punishable under Sections 148, 354, 357, 342, 504, 506 read with Section 149 IPC. During pre-charge evidence, the complainant produced seven witnesses. It is apposite to mention that though the complainant filed the complaint against 10 persons, however, Hon'ble High Court vide its order dated 22.09.2014 quashed the proceedings against all the remaining accused except respondent No.2-Daljit Singh. Learned trial Court framed charges against respondent No.2 under Sections 354, 342, 357, 504 and 506 IPC.

After framing the charge, the counsel for the accused further cross-examined CW1-complainant and CW4 Jaswinder Singh. However, CW3 Manjit Kaur did not appear in after charge evidence and the

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complainant closed her after charge evidence on 03.06.2015.

It is submitted that the version put forward by the complainant was duly corroborated by other witnesses and the documentary evidence on record, however, the learned trial Court failed to appreciate the same and has drawn a wrong conclusion in acquitting the accused. He submits that the complainant herself appeared as CW2 during pre-charge evidence and Arun Kumar, who was working in OnDott Courier Service, Fazilka appeared as CW1, who tendered the courier receipts as Exh.C2 to Exh.C9. He also submits that SP Jain, Nodal Officer, Bharti Airtel Ltd. who tendered the certificate issued by the Airtel Company with regard to issuance of mobile phone connection in the name of the complainant, appeared as CW6. He submits that as no action was taken by the police on the complaint filed by the complainant before it, hence the complainant was compelled to file the present complaint wherein the charges against respondent No.2 were proved beyond reasonable doubt, however, the learned trial Court failed in appreciating the same and thus, arrived at a wrong conclusion in acquitting the accused. He submits that in view of the overall evidence and the law settled, the impugned order, dated 22.07.2015, acquitting respondent No.2-accused be set aside and he be convicted for the charges he was prosecuted by the trial Court.

Heard learned counsel for the applicant and perused the record.

It is apparent from the arguments advanced and perusing the record that the complainant and respondent No.2-accused are close relatives as respondent No.2 is the brother-in-law (*Jeth)* of the complainant. Allegedly, a police complaint was filed by the complainant and as

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investigating agency did not take any action, hence the present complaint was filed. The complainant produced preliminary evidence and thereafter the pre-charge evidence. It is apparent that even Manjit Kaur, i.e. mother-in-law of the complainant, who appeared during preliminary evidence did not appear after the charges were framed for proving the offence under Section 354 IPC. The evidence of the witnesses is duly appreciated. From the combined perusal of the evidence of the relevant witnesses, i.e. the complainant and CW6 S.P.Jain, it is found that presence of the complainant and the respondent at the bus stand becomes doubtful as there is no independent evidence produced to show their presence at the bus stand at the relevant time. So far as the allegations pertaining to the obscene conversation made by respondent No.2-accused with the complainant on the phone is concerned, CW6 SP Jain, who appeared as Nodal Officer, Bharti Airtel Ltd., deposed that record of the call details, which is older than one year, was not available and thus, there was no evidence regarding the call details. Further the allegations were made against the accused that on 20.07.2012 he encircled the house of the complainant when they were duly armed. However, there is no credible independent evidence produced on record which could prove the allegations levelled. There is nothing on record proving any overt act made by the accused who was duly armed alongwith nine other accused. This is also apposite to appreciate that the proceedings regarding rest of the 9 accused were quashed by this Court vide order dated 22.09.2014.

In view of the evidence which is self contradictory, the offence under Section 354 IPC is also not made out. The complainant examined

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Jaswinder Singh as CW4, who was produced for supporting the evidence given by the complainant and said that on 22.07.2012, the accused-respondent No.2 was hurling abuses to the complainant and her husband and he allegedly prepared a video of Daljit Singh. However, there was no allegations in the complaint for the alleged occurrence. More over, when this witness appeared before the trial Court during pre-summoning evidence, he deposed that CD was prepared by Nirpal Singh. Thus, there is self contradictory evidence produced by the complainant on record. The mother-in-law Manjit Kaur though appeared during preliminary evidence, however, thereafter she was not produced. On appreciation of the evidence on record, the Court finds that the conclusion drawn by the trial Court in granting benefit of doubt to respondent No.2-accused suffered from no illegality. Learned counsel for the petitioner fails in pointing out any perversity in the conclusion arrived at by the learned trial Court. The law relating to appeal against acquittal and that of the appeal against conviction is entirely different. The appellate Court should refrain from interfering in the acquittal in a mechanical manner and it is only in the case of perversity that the appellate Court should interfere. It has been reiterated by the Apex Court time & again that after acquittal, there lies double the presumption of innocence in favour of the accused. In **Jafarudheen and others vs State of Kerala** 2022 SCC Online SC 495, it is held that Appellate Court has to be relatively slow in reversing order of trial Court rendering acquittal, relevant para of the same reads thus:

> "While dealing with an appeal against acquittal by invoking Section 378 of the Cr.P.C., the appellate Court has to consider whether the trial Court's view can be terms as a possible one,

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> particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."

Finding no perversity in the findings arrived at, this Court finds no ground to grant leave to appeal to the applicant. The same is hereby declined.

July 12, 2022 **(RAJESH BHARDWAJ)**
meenuss **JUDGE**

1. Whether speaking/reasoned ? **Yes/No**
2. Whether reportable ? **Yes/No**

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