

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

**CRM No.4304 of 2020 in/and
CRM-A No.252 of 2020
Date of decision : 05.09.2023**

Kuldeep Singh

....Applicant

Versus

Jaswinder Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Ranjeet K. Jaswal, Advocate
for the applicant.

PANKAJ JAIN, J.

CRM No.4304 of 2020

This is an application under Section 5 of the Limitation Act for condonation of delay of 25 days in filing the instant application seeking leave to appeal.

For the reasons recorded in the application, the delay of 25 days in filing the application seeking leave to appeal, is hereby condoned.

Application stands disposed off.

CRM-A No.252 of 2020

The complainant seeks leave to appeal against the judgment dated 23rd of October, 2019 passed by JMIC, Amritsar whereby the complaint preferred by the applicant against the respondents/accused stands dismissed and the respondents/accused stand acquitted.

2. Complaint was preferred by the applicant against the respondent alleging offences punishable under Sections 420, 467, 468 471, 120-B IPC. As per the complainant he along with accused No.1 Darshan

Singh and one Ranjit Singh are the sons of late Arjun Singh. Arjun Singh was owner of two parcels of land. One situated in the village Kambo and the other in the Revenue Estate of village Bhoru. Apart from the residential house in village Kambo. It is claimed that Arjun Singh during his lifetime partitioned the aforesaid land. Land situated in village Bhoru fell to the share of accused No.1 Darshan Singh. The two other brothers i.e. the complainant and Ranjit Singh along with their mother Harbans Kaur got the land situated in the Revenue Estate of Kamboh. *Qua* her share mother Harbans Kaur executed a Will dated 15.03.1994 in favour of the complainant and his brother Ranjit Singh. She died on 28.04.1997. It is admitted case that prior to her death Harbans Kaur gave power of attorney pertaining to her share of land in favour of complainant and other brother Ranjit Singh. Both the complainant and Ranjit Singh executed registered Sale Deeds acting as attorneys of Harbans Kaur in favour of their respective wives on 11.08.1995. Wife of Ranjit Singh as well as wife of the petitioner alienated the aforesaid land received from Harbans Kaur vide registered Sale Deeds of the year 2001 in favour of accused No.3 Harjit Singh. The complaint has been filed claiming that an Agreement to Sell has been forged and the forgery is evident from the fact that the said Agreement bearing thumb impression of Harbans Kaur is dated 17.05.2005. Harbans Kaur having died in the year 1997 cannot be believed to have thumb-marked Agreement to Sell on 17.05.2005. Complainant alleges that the accused No.1 Darshan Singh committed the said forgery.

3. After the complainant led evidence accused were summoned for offence punishable under Section 420 IPC only and were charged for the same. Trial Court dismissed the complaint observing that once it is admitted that the entire share of Harbans Kaur stood alienated firstly in favour of wives of the complainant and his brother and subsequently in favour of accused No.3 in the year 2001 itself, there was no occasion to forge thumb of Harbans Kaur as claimed by the complainant in the year 2005. It has further come on record that the alleged forged document has not seen light of the day and Sukhpreet Kaur, Finger Print & Handwriting expert examined as CW3 admits that the thumb impressions compared by her were taken from photocopy documents and she has not even seen the originals. She further admitted in cross-examination that the thumb-impressions in question were not even compared with the admitted original thumb-impression of Harbans Kaur. It has further come on record that mutation in favour of the petitioners *qua* land situated in village Kambo already stands cancelled by the Appellate Revenue Authorities and the complainant admits that he himself has alienated considerable land in favour of the accused.

4. In the light of the aforesaid circumstances, the Trial Court found that there was nothing on record to prove that the accused persons have in any manner forged the document. Apart therefrom the complainant admits that for forgery of signature/thumb-impression of deceased Darshan Singh, an FIR was registered against the complainant, the other brother

Ranjit Singh as well as their brother-in-law in which some of them have earned conviction.

5. The law w.r.t. Appellate Jurisdiction stands settled by Four Judges Bench of Apex Court in case of **Bansidhar Mohanty vs. State of Orissa, reported as AIR 1955 Supreme Court 585** holding as under :

“xx xx xx

4. The principles on which the High Court should act in an appeal from an order of acquittal have been quite clearly laid down by the Privy Council in the case of -- '**Sheo Swarup v. Emperor**', AIR 1934 PC 227 (2) at pp. 229-230 (A). The same principles have been so often reiterated by this Court that it is hardly necessary to restate them 'in extenso'.

It will be sufficient to refer to the decisions of this Court in -- '**Surajpal Singh v. The State**', AIR 1952 Supreme Court 52; - '**Puran v. State of Punjab**', AIR 1953 Supreme Court 459 and '**Narayan Ittiravi v. State of Travancore-Cochin**' AIR 1953 Supreme Court 478. It is now well settled by the abovementioned decisions that while in an appeal under Section 417, Criminal Procedure Code of the High Court has full power to review the evidence upon which the order of acquittal was founded, nevertheless, in exercising the power conferred by the Code the High Court will give proper weight and consideration to such matters as (i) the views of the trial Judge as to the credibility of witnesses; (ii) the presumption of innocence in favour of the accused reinforced by the fact of his acquittal at the trial, (iii) the right of the accused to the benefit of any doubt and (iv) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.”

6. The same was reiterated in the case of **Chandrappa and**

others vs. State of Karnataka, (2007) 4 SCC 415 wherein it was held that :-

“(1) An appellate Court has full power to review, reappraise 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 emphasize 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.”

(emphasis supplied)

7. Further reiterated in the case of '**State of Uttar Pradesh vs. Banne @ Baijnath' (2009) 4 SCC 271.**

8. I have heard counsel for the petitioner and have gone through records of the case.

8. In view of above this Court does not find that there is any reason to hold that the view taken by the Trial Court is not probable or that the Trial Court committed any error that can lead this Court to a different conclusion on re-appreciation of evidence. Resultantly, the present application seeking leave to appeal stands dismissed.

September 05, 2023
Dpr

(PANKAJ JAIN)
JUDGE

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