

CRM-A-159-2023 (O&M)

2023:PHHC:062787

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-159-2023 (O&M)
Date of Decision : 02.05.2023

Union of India

..... Applicant

Versus

Parmal Kumar

..... Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Ms. Sharmila Sharma, Advocate
for the applicant.

VIKRAM AGGARWAL, J (ORAL)

CRM-5765-2023

Prayer in the present application is for condonation of delay of
135 days in filing the accompanying application.

Heard.

For the reasons, mentioned in the application, the same is
allowed. Delay of 135 days in filing the accompanying application is
condoned.

CRM-A-159-2023

1. Prayer in this application is for grant of leave to file appeal
against the judgment dated 19.07.2022, passed by the Special Railway
Magistrate, Ambala Cantt. vide which the respondent was acquitted of the
charges framed against him.

2. The facts, in brief, are that on 31.08.2019, it was found that the Optical Fibre Cable wire (OFC wire) in between KM No.190/33-35 was cut by the respondent while driving the JCB Machine bearing registration No.HR-38S-9982 and he had, thereby, obstructed the smooth and safe running of trains, by his rash and negligent act. An FIR was registered. Investigation commenced. On completion of investigation, final report under Section 173 Cr.P.C. was submitted. The respondent was charge-sheeted under Section 174-C of the Railways Act. Trial commenced. Five witnesses were examined by the prosecution. However, after considering the matter, the trial Court acquitted the respondent-accused, leading to the filing of the present application for grant of leave to file appeal.

3. Learned counsel for the applicant submits that the trial Court gravely erred in acquitting the accused as on account of the optical fibre cable wire having been cut by the respondent while driving the JCB machine, the smooth and safe running of trains had been obstructed which could have led to some accident also. It has been submitted that despite cogent evidence having been led, the trial Court wrongly acquitted the accused. Reference has been made to various parts of the judgment and an attempt has been made to convince the Court that the judgment passed by the trial Court is not sustainable.

4. I have considered the submissions made by learned counsel for the applicant but find the same to be devoid of merit. On 31.08.2019, an

incident took place in which the respondent-accused, while driving a JCB machine, cut the underground optical fibre cable wire.

5. Section 174 of the Railways Act lays down as under:-

“Obstructing running of train, etc.—If any railway servant (whether on duty or otherwise) or any other person obstructs or causes to be obstructed or attempts to obstruct any train or other rolling stock upon a railway,—

(a) by squatting or picketing or during any Rail roko agitation or bandh; or

(b) by keeping without authority any rolling stock on the railway; or

(c) by tampering with, disconnecting or interfering in any other manner with its hose pipe or tampering with signal gear or otherwise,

he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both”

Section 174 (c) deals with the obstruction or attempt to obstruct any train or other rolling stock upon a railway by tampering with or disconnecting or interfering in any other manner with its hose pipe or tampering with signal gear or otherwise would be punishable with imprisonment for a term which may extend to two years or with fine which may extend to Rs.2,000/- or with both.

6. The prosecution was required to prove that the respondent-accused had been negligent in driving JCB Machine as a result of which the optical fibre cable wire had been cut. Admittedly, all the witnesses examined

by the prosecution admitted in their cross-examination that no sign board, notice or milestone was installed by the Railways on the site of the occurrence, depicting that an optical fibre cable wire was installed underneath the land which could have alerted any person undertaking any work there. The respondent-accused could not have judged without any notice in this regard that there was an optical fibre cable wire underneath or even if he had some idea for the sake of assumption, he would not have any idea with regard to the depth of the same. It cannot, therefore, be said that the respondent-accused was driving the JCB machine in a rash and negligent manner. Still further, it also came on record that the respondent-accused had been deputed by the Forest Department to dig the roots of the trees so that these trees could be uprooted. It is, therefore, not a case where some private person had been digging or using a JCB machine in a rash and negligent manner on Government land. The respondent-accused, as already stated, had been deputed by the Forest Department and, in the absence of any sign or marking that optical fibre cable wires were running underneath that very land, the respondent-accused cannot be blamed for having cut them in a rash and negligent manner while doing his duty. The trial Court discussed the matter from every angle and then arrived at a finding that the accused deserves to be acquitted. I do not find any illegality or infirmity in the well reasoned judgment of the trial Court.

7. Even otherwise, it is settled law that Appellate Courts should be slow in interfering in judgments of acquittal unless and until, the judgment under challenge is found to be perverse. It is equally well settled that even

where two views are possible, the view favouring the accused should be taken. Reference in this regard has been made to the to the judgments of the Hon'ble Supreme Court in *Sadhu Saran Singh Vs. State of U.P. and others 2016 (2) RCR (Criminal) 319, State of Maharashtra Vs. Fazal Rehman Abdul, 2014 (7) SCC (Criminal) 01, State of Rajasthan Vs. Madan alias Madaniya 2019 Crl.L.R. (S.C.) 09* and *Rabindra Kumar Pal alias Dara Singh Vs. Republic of India 2011(2) SCC 490.*

In view of the aforementioned facts and circumstances, I do not find any reason to interfere in the impugned judgment dated 19.07.2022, passed by the trial Court and, consequently, finding the application for grant of leave to file appeal to be devoid of merit, the same is hereby dismissed.

(VIKRAM AGGARWAL)
JUDGE

02.05.2023
mamta

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No