

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
220 **CRM-A-1165-MA-2016 (O&M)**
Date of decision: 19.09.2023

Smt. Mamta

...Appellant(s)

Vs.

Tejpal & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Jai Singh Yadav, Advocate
for the appellant.

NIDHI GUPTA, J.

CRM-19087-2016

This is an application under Section 5 of Limitation Act seeking condonation of delay of 42 days in filing the appeal.

After going through the contents of the application, the same is allowed subject to all just exceptions.

MAIN CASE

Present appeal is filed against judgment dated 08.02.2016 passed by learned Chief Judicial Magistrate, Rewari, whereby accused/respondent No.1 herein, has been acquitted in criminal case No.454 of 2013 titled as "State Vs. Tejpal" arising out of FIR No.353 dated 09.09.2013 registered under Sections 354, 457 and 506 IPC at Police Station Dharuhera.

2. Learned counsel for the appellant inter alia submits that the learned trial Court was in manifest error in acquitting respondent No.1/accused as the appellant had led cogent and comprehensive evidence in support of her allegations. Learned counsel contends that however, the

learned trial Court ignored the prosecution evidence even though admittedly, all the prosecution witnesses had supported the version of the complainant. It is submitted that the learned trial Court erroneously rejected the prosecution witnesses on the ground that they were all hearsay witnesses, however, learned trial Court failed to appreciate that in such kind of cases, eyewitnesses are not available. It is submitted that even the finding given by the learned trial Court that the complaint is a counter blast to DDR No.36 dated 07.09.2013 registered by respondent No.1 against husband of the appellant, is factually incorrect. Learned counsel prays that accordingly, the impugned judgment be set aside, and present appeal be allowed.

3. I have heard learned counsel for the appellant.

4. Brief facts of the case are that the appellant moved a written complaint before the police to the effect that on 29.08.2013, she was at her home. Tejpal s/o Rajesh/respondent No.1 herein, gave his telephone number to her and asked her to call, but she did not give any call to him. Thereafter, he caught hold of her hand and neck, but she pushed him away and came back to her home. On 30.08.2013, he tried to outrage her modesty and threatened to kill her. About six months ago, at about 11:45 PM, he trespassed into her house and tried to outrage her modesty. She prayed that strict action may kindly be taken.

5. Perusal of record of the case reveals that in order to prove their case, the prosecution had examined eight witnesses. As per the record, an application under Section 216 Cr.P.C. as well as leading additional

evidence, which was allowed and fresh charge sheet was served upon respondent No.1 to which he pleaded not guilty and claimed trial.

6. After perusal and consideration of the entire documentary and oral evidence on record, as well as the pleadings and submissions made on behalf of the parties, the learned trial Court has returned the following findings:-

“17. At the very outset, it is pertinent to mention here that except the bald statement of the complainant, no other cogent piece of evidence is available on record to bring home the guilt of the accused. PW1 Sunita, PW2 Krishan Kumar and PW3 Tula Ram are the interested and hearsay witnesses only. Their testimonies do not inspire the trust and confidence of the Court. All of the above-said witnesses have admitted that no such incident had taken place in their presence. Hence, their testimonies cannot be relied upon as they are the hearsay witnesses only. PW5 Dr. Sandeep Yadav has proved on record MLR of the accused as Ex. PW5/B, but nothing is available on record to prove that the complainant had ever sustained any injuries at the hands of the accused. Except the testimonies of PW4 ASI Vijender Singh and PW6 Mamta, i.e. complainant, no other cogent piece of evidence is available on record. However, in the cross-examination of both of these witnesses, it has come that a case has been got registered against the husband of the complainant under section 107/151 Cr.P.C. It is the defence of the accused that he is innocent and a false case has been registered against him as husband of complainant wanted to buy the plot of Nihal Singh whereas they have purchased the same on higher price. On this, a dispute arose between his father, him and husband of complainant. Due to this dispute on 07.09.2013, he went to the

house of in-laws of his sister, and on that day, husband of complainant Krishan went to Ashiya Ki Gaurawas and abused him and in-laws of his sister at the house of in-laws of his sister. Due to this a DDR no. 36 dated 07.09.2013, under sections 107/151 Cr.P.C. was registered against Krishan husband of complainant at Police Station Rohdai and in counter blast of DDR No. 36, present case has been registered against him on 09.09.2013, which stands corroborated in the light of testimony of complainant as well as the investigating officer. Both of them have admitted registration of case against the husband of complainant under sections 107/151 Cr.P.C. Hence, the accused is entitled to be benefit of acquittal. 18. Further, the alleged incident had taken place on 29.08.2013 and 30.08.2013 respectively and the present FIR has been lodged on 09.09.2013. The prosecution has failed to explain the delay. The complainant has alleged in her complaint that earlier six months ago, the accused had tried to outrage her modesty, but in this regard, there is nothing on record to prove that she has ever reported the matter to the police. Hence, it seems to this Court that the present complaint is motivated complaint and has been filed just to take revenge. Hence, on this score also, the accused is entitled to be benefit of acquittal.”

7. From the above findings, it becomes evident that the present FIR dated 09.09.2013 is a counter blast to the DDR No.36 dated 07.09.2013 lodged by the respondent No.1/accused herein under Sections 107 and 151 Cr.P.C. against husband of the appellant/complainant at Police Station Rohdai. Furthermore, when learned counsel was directly confronted with the fact that dates of alleged incident are 29.08.2013 and 30.08.2013, however, FIR No.353 was lodged after a delay of 10 days only on 09.09.2013, learned counsel for the petitioner submitted that the

complaint was filed by the appellant on 30.08.2013 itself, however, FIR was registered ten days thereafter. However, perusal of record of the case reveals that the complaint (Exhibit PW6/A) was also dated 09.09.2013. It therefore becomes clear that the present case was registered as a counter blast to the above said DDR; and that there is an unexplained delay of about ten days in registration of the FIR. Furthermore, learned counsel for the appellant is unable to dispute or controvert the above said findings of the learned trial Court. Accordingly, in view of the above said uncontroverted factual position, I find no ground is made out to interfere in the impugned order. Present appeal accordingly stands **dismissed**.

8. Pending application(s) if any also stand(s) disposed of.

19.09.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No