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

**CRM-A-1174-MA-2016
Date of decision : 27.02.2023**

Surender Singh

.....Applicant

versus

State of Haryana and others

..... Respondents

**CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Roopak Bansal, Advocate
for the applicant.

RAJESH BHARDWAJ, J.

This application has been filed under Section 378(4) Cr.P.C. by the applicant for grant of leave to appeal against the impugned order dated 21.04.2016 whereby learned Additional Sessions Judge, Panipat has dismissed the appeal filed by the applicant/complainant.

As per the facts of the case, the applicant is the complainant on whose statement the FIR No.406 dated 25.09.2008, under Sections 323, 325, 506, 34 IPC, at Police Station Model Town, Panipat was registered against the respondents-accused. It was alleged that on 24.09.2008, a *ruqa* was received from the doctor on which IO Mohd. Ellyas reached the Government Hospital, Panipat. As the complainant was not fit for giving statement at that time so, his statement was recorded on 25.09.2008. It was alleged that the sister of the complainant is married with respondent-Vikas and she was harassed in her matrimonial home. He

submits that on 24.09.2008, he went along with his father and when they got down at Gohana road then respondents Vikas, Binder and Himanshu gave them beatings. On their raising alarm, the accused escaped. His brother Pardeep arranged a vehicle and took them to Government Hospital, Panipat for treatment. On the basis of the complaint, FIR was registered and investigation commenced. The investigating agency filed the challan and learned trial Court framed charges and conducted the trial. Both the sides led their respective evidence and learned trial Court convicted and sentenced the respondents-accused vide its order dated 06.02.2015. The respondents-accused assailed the same by way of filing the appeal before learned Additional Sessions Judge, Panipat. The complainant also filed an appeal for enhancement of sentence awarded to the accused. However, after hearing both the sides, learned Additional Sessions Judge, accepted the appeal filed by accused persons and thus, acquitted the respondents/accused vide impugned order dated 21.04.2016. By the same order, learned Additional Sessions Judge, Panipat dismissed the appeal filed by the complainant. Aggrieved by the same, the complainant has approached this Court by way of filing the present leave to appeal.

Learned counsel for the applicant has contended that the learned trial Court has fallen in error in misreading the evidence on record. He submits that after a thorough investigation, challan was presented as the allegations were found to be well substantiated. He has submitted that the prosecution witnesses duly supported the case of the prosecution which was medically corroborated and thus, the respondents were rightly convicted by learned trial Court. He submits that learned

Appellate Court has miserably failed in appreciating the evidence on record. He has submitted that even if the parties were involved in litigation on the earlier occasion that was not sufficient enough to disbelieve the case of the prosecution and hence, the conclusion arrived at by the Appellate Court is totally perverse and thus, deserves to be *set aside* and the conviction and sentence as granted by the trial Court be upheld.

Heard. After hearing counsel for the applicant and perusing the record, it is apparent that both sides i.e. the applicant and the respondents-accused are related to each other as the sister of the complainant is married with respondent-Vikas. The complainant appeared in the witnesses box as PW-1 and Dr. Nitin Kalra has been examined as PW-5. Learned Appellate Court has re-appreciated the evidence on record and it was found that as per the MLR, the complainant suffered two injuries i.e. one abrasion and lacerated wound. The injuries were declared simple in nature. As per the allegations, the weapon of offence carried by the accused were *saria* and *lathi* blow of which were allegedly hit on the head and left hand of complainant. However, the MLR did not corroborate the same. The respondent-accused Himanshu was alleged to have armed with danda but there was no specific deposition that he caused injuries on the left hand of the complainant. The deposition made by the witness Raghbir Singh i.e. PW-3 is also found to be suffering from contradictions. The deposition of Dr.Nitin Kalra, PW-5 further shattered the case of the prosecution. The judgment dated 16.08.2014 was produced which reflects that the complainant had lodged FIR No.328 dated 26.09.2008 against Vikas and his mother and in that case both the

accused were acquitted. This proved the fact that the parties were already involved in the litigations and thus, the complainant had a strong motive for initiating the prosecution against respondents-accused.

As per the law settled, the appeal against conviction and that against acquittal rests entirely on different pedestal. In case of acquittal, it has been held by Hon'ble Supreme Court repeatedly that if there are two views possible in a given case, then, the one favouring the accused should be adopted. As per the criminal jurisprudence, every accused is presumed to be innocent until proven guilty. As per the law settled by Hon'ble Supreme Court, once the accused is acquitted by the Court of law, there lies double presumption of innocence in his favour. Hence, an Appellate Court should not disturb in a cavalier manner the findings arrived at by the trial Court resulting in acquittal of accused and it is only in case of perversity of the findings, the Appellate Court should interfere in the acquittal order passed by the trial Court. 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:-

“25. 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 termed as a possible one, 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.”

Weighing the facts and circumstances of the present case on the anvil of law settled, this Court finds no perversity in the order passed by the trial Court. Resultantly, the present application for grant of leave to appeal is dismissed.

27.02.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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