

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107

CRM-A-2426-MA- 2018 (O&M)

Date of Decision: 14.09.2023

Ved Parkash Mittal

...Applicant

Vs.

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Akhil, Advocate
for the applicant.

Mr. Rajinder Kumar Banku, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

CRM 37800 of 2018

1. The applicant has filed the present application under Section 5 of the Limitation Act for condonation of delay of 149 days in filing application for leave to appeal.

2. I have heard the learned counsel for the applicant and perused the record.

3. For the reasons mentioned in the application, the delay of 149 days in filing the application for leave to appeal is ordered to be condoned.

CRM-A-2426-MA-2018

1. The applicant has filed the present application under Section 378(4) with a prayer to grant leave to appeal against the

impugned judgement dated 03.02.2018 passed by the Sub Divisional Judicial Magistrate, Dabwali, whereby, the respondents No. 2 and 3 have been ordered to be acquitted of the charge.

2. As per the case of the complainant, his father Hardwari Lal Mittal had performed two marriages and Kishori Lal, Jagdish Parshad and Neta Nand were born from first wife and the complainant was born out of the second wedlock. The name of mother of the applicant was Radha Devi and the respondent No. 2 is the son of step brother of the applicant. The mother of the applicant/complainant owned 12 tolas of gold and 3 kgs of silver with the consent of the applicant. She entrusted the gold and silver to Mohan Lal Fadiya father of respondent No. 3. After the death of Mohan Lal Fadiya, the gold and silver articles came into possession of Subash, respondent No. 3. Mother of the applicant visited Liladhar for some days, where she died on 02.06.2013. The respondent No. 2 in collusion with respondent No. 3 did not allow applicant to participate in the last rites of late Radha Devi and even the name of the applicant was not mentioned in the card printed for the last prayer ceremonies of his mother. They even did not allow the applicant to attend the Garud Puran and Bhog ceremonies on 13.06.2013, rather they threatened to kill him. The respondents No. 2 and 3 in collusion with the other accused had misappropriated the silver and gold articles owned by the

mother of the applicant. A complaint was moved by the applicant before the SP Sirsa where a compromise was effected and respondents No. 2 and 3 and their accomplices had agreed to return the articles to him, but later on they refused to honour their commitment. When the police failed to take any action, the present complaint was filed by the applicant against the accused.

3. Learned counsel for the applicant submitted that the trial Court had completely failed to appreciate that the applicant had led sufficient evidence to show that the respondents No. 2 and 3 had committed offence punishable under Sections 468, 471, 191, 192, 193, 419, 420, 511, 506 and 120-B IPC. Even the applicant was successful in proving the fact that the gold and silver ornaments were with respondents No. 2 and 3 and they had already admitted the said fact during the course of the investigation. Subash respondent No. 3 had no right over the gold and silver articles and respondent No. 3 had agreed to return the same before the police but later on he resiled from the said compromise deed. Apart from that, sufficient evidence was led to show that the ornaments were lying with the respondents and they had misappropriated the jewelry.

4. I have heard counsel for the applicant and perused the record carefully.

5. The main allegation leveled by the applicant is that gold and silver articles were entrusted by mother of the applicant to Mohan Lal and after the death of Mohan Lal Fadiya, gold and silver articles were inherited by Subash, respondent No. 3 and he had no right or title over the same. Even, the gold and silver articles had been misappropriated by respondent No. 3 in collusion with other accused. However, the applicant could not lead any evidence to show as to when the alleged gold and silver articles were entrusted by his mother to Mohan Lal Fadiya. The trial Court is right in observing that any date, time, month, year or the place of entrustment were not proved by the applicant. Even, he did not disclose the date, time, month or year when the articles were inherited by Subash and were handed over to Liladhar, respondent No.2. Even, no documentary evidence has been placed on record by the applicant to show that such gold and silver jewelry ever existed and only a vague averment has been made with regard to the existence of the gold and silver articles. When the applicant has failed to prove the entrustment of gold and silver articles by Mohan Lal Fadiya to the accused, there was no question of commission of the offence of criminal breach of trust. Thus, the basic ingredients of the offence under Section 406 IPC are not proved. Even, the applicant failed to place on record any bill or any other document on record, which could prove the fact that such jewelry ever existed. Not only this, Bimla and Shankultla real sisters of the

applicant had refused to support the case of the applicant. Their statements were exhibited as Ex.D2 and D3 and they had submitted that the gold and silver articles should be sold away and the sale considerations be spent on the last ceremonies of the Radha Devi and the remaining amount may be distributed somewhere else. Even from statements Ex.D2 and D3 it is evident that the applicant turned out their mother from his house about 35 years ago and his mother did not want to give anything to him. Thus, even the applicant had no locus to file the complaint before the trial Court and his claim has been rightly rejected by the trial Court. Apart from that, it is apparent that his own real sisters were against him and were not in favour of granting anything to him, against their mother. Rather from the findings recorded by the trial Court it is apparent that the complainant had tried to victimize the respondents No. 2 and 3, for serving his mother, who was thrown out of the house by the applicant about 35 years ago. Thus, the impugned judgment is based on correct appreciation of evidence and law and does not suffer from any material irregularity, illegality or perversity and is liable to be upheld by this Court.

6. It has been held by the Hon'ble Supreme Court in the matter of **“Bhaskarrao and others Vs. State of Maharashtra”**, **2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228** as follows:-

*“14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in **Tota Singh and Anr. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974** -*

"The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappraisal, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a reappraisal of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the

case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

15. In *Ramesh Babulal Doshi v. State of Gujarat, 1997(3) RCR (Criminal) 62 : 1996 CriLJ 2867*, this Court observed:

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

7. Still further in **Criminal Appeal No(s.) 410-411/2015 [Ravi Sharma Vs State (Government of N.C.T. of Delhi) and another]**, decided on 11.07.2022, Hon'ble the Supreme Court has held as under:-

*“Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Code of Criminal Procedure (for short ‘Cr.P.C.’) while deciding an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant portion of a recent judgment of this Court in **Jafarudheen and Others v. State of Kerala (2022 SCC Online SC 495)** as follows:*

“25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, 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.”

8. Considering the peculiar facts and circumstances of the case noted above coupled with the reasons mentioned aforesaid, the Court is of the considered view that the present application for leave to appeal is without any substance and it must fail.

9. Consequently, the impugned judgment dated 03.02.2018 passed by Sub Divisional Judicial Magistrate, Dabwali, is ordered to be upheld.

10. Resultantly, with the above-said observations made, the application for leave to appeal stands dismissed.

11. Pending application(s), if any, is also disposed off.

12. Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation for filing the appeal, in accordance with law.

14.09.2023

amit rana

(N.S.SHEKHAWAT)

JUDGE

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