

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**221****CRM-A-2462-MA-2018 (O&M)****Date of decision: 19.09.2023****Mehroofa Khatoon****...Applicant(s)****Vs.****Saukat Ali & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: - Mr. Munish Mittal, Advocate
for the applicant.

NIDHI GUPTA, J.

CRM-38651-2018

This is an application under Section 5 of Limitation Act read with Section 482 Cr.P.C. 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 application under Section 378(4) Cr.P.C. is filed seeking leave to file appeal against judgment dated 05.03.2018 passed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, whereby accused/respondents No.1 to 7 herein, have been acquitted in complaint under Sections 148, 323, 324, 354, 316, 406, 452, 506 read with Section 34 IPC.

2. Brief facts of the case as per the applicant are that husband of the applicant/complainant was employed with Haryana Waqf Board and at the time of occurrence, he was posted at Jama Masjid

Mustafabad as Hafiz and the applicant along with her husband and children was residing at Jama Masjid Mustafabad from the last nine months. Respondents No.1 to 6 were illegally and forcibly residing at Jama Masjid Mustafabad and using articles lying in the Masjid without any authority. Respondents No.1 to 6 also took donation which was being donated by the villagers who came to offer Namaz in the Masjid and they misappropriated the same. When husband of the applicant/complainant requested respondent No.1 not to take law in his own hands by misappropriating the donation and not to use the articles lying in the Masjid which were not for his use and his family members i.e. respondents No.2 to 6, then respondent No.1 threatened the applicant and her husband with dire consequences and also threatened the husband of the applicant to get him involved in some false case on behalf of his daughter. He also threatened that one of his relatives namely Mamudeen/respondent No.7 herein, who was an officer in Waqf Board, Ambala would suspend husband of the applicant in case the applicant and her husband made any complaint to any authority.

3. Learned counsel for the applicant inter alia submits that when husband of the applicant/complainant and other villagers became fed up with the illegal activities of respondents No.1 to 7, they made a complaint to the CEO, Waqf Board, Panchkula. This annoyed the accused/respondents No.1 to 7 and therefore, on 03.04.2011, when husband of the applicant came out of the Masjid after offering Namaz, respondents No.1 to 7 herein started abusing her husband and attacked the applicant as well as her husband with dandas. It is submitted that

respondents No.4 to 7 also caught hold of the applicant and threw her on the ground, touched her private parts and gave leg blows on her stomach, even though at that time, the applicant was three months' pregnant. It is submitted that thereafter, the complainant and her husband being badly injured were taken to Civil Hospital, Mustafabad. As the injuries inflicted upon the applicant and her husband were serious in nature, they were referred to Civil Hospital, Yamuna Nagar and further referred to Civil Hospital, Ambala City and then to Government Hospital, Sector 32, Chandigarh, where doctors tried their best to save the child in the womb of the applicant, but could not do so.

4. Learned counsel submits that on 07.04.2011, husband of the applicant took her at Civil Hospital, Jagadhri where hospital authority sent a ruqa to Police Station. Due to serious condition of the applicant, doctors referred her to hospital of Sector 6, Panchkula wherein on 08.04.2011, abortion was done, and the applicant lost her unborn child. It is further submitted that SHO Ishwar Singh and SI Satpal Singh of Police Station Thanna Chapper instead of helping the applicant, threatened her with dire consequences in case she pursued the matter further against respondents No.1 to 7 and also pressurised her to compromise the matter with them. Thereafter, on 15.04.2011, husband of the applicant moved an application to the office of Superintendent of Police, Yamuna Nagar for taking legal action against respondents No.1 to 7 but no action was taken against them. It is submitted that it is in this situation that the applicant

filed the present private complaint under Sections 148, 323, 324, 354, 316, 406, 452, 506 read with Section 34 IPC.

5. Learned counsel further submits that after recording preliminary evidence, vide order dated 04.06.2015, respondents No.1 to 7 were directed to be summoned for the commission of offences punishable under Sections 323, 316, 354, 506 read with Section 148 IPC. On appearance, after supplying relevant documents, the case was committed to the Court of Sessions for trial vide order dated 27.04.2016 passed by learned Judicial Magistrate, 1st Class, Yamuna Nagar at Jagadhri. It is submitted that however, vide impugned order dated 05.03.2018, learned Additional Sessions Judge has dismissed the case of the applicant and acquitted respondents No.1 to 7 without appreciating the clear evidence on record. It is submitted that the applicant in her statement had specifically stated that she and her husband were beaten up by respondents No.1 to 3 and respondents No.4 to 7 had molested her and due to the severe beatings inflicted upon her by respondents No.1 to 7, she had lost her unborn child. It is further submitted that in this regard, learned trial Court has failed to appreciate the testimony of Dr. Shelly Goyal (CW2), Dr. Nitika (CW4), and also other complainant witnesses from whose testimony, it is evident that the applicant had lost her unborn child on 07.04.2011 due to the present incident that had taken place on 03.04.2011. Learned counsel further submits that learned trial Court has not even appreciated the documentary evidence placed on record. It is accordingly prayed that impugned judgment dated 05.03.2018 be set aside.

6. I have heard learned counsel for the applicant.
7. Perusal of the impugned judgment reveals that after proper consideration and appreciation of the entire documentary and oral evidence on record, as well as the pleadings and submissions of the parties, learned trial Court has returned the following findings:-

“21. The incident in question is of dated 03.04.2011, at about 8:30 AM and on receipt of injuries, she (complainant) was allegedly taken to hospital i.e. CHC, Mustafabad, by one Salim on his motorcycle and they reached there at about 10:00 AM, but she was medically examined at 12:00 noon. Later on, they reached at General Hospital, Yamuna Nagar at 4:00 PM, from where, she was referred to Ambala Civil Hospital for ultrasound purpose and from there, on account of non-availability of machine, she was referred to PGI, Chandigarh, however, her pregnancy was terminated on 08.04.2011 in Hospital Sector-6, Panchkula. Thus, on 04.04.2011, 05.04.2011, 06.04.2011 and 07.04.2011, as per her version, her pregnancy was safe. It is worthwhile to note here that, as per her deposition, on 03.04.2011, at about 7:00-8:00 PM, she visited Chhappar Police Station and also on 05.04.2011, she alongwith her husband appeared before Superintendent of Police, Yamuna Nagar and narrated him the whole incident. It is a matter of surprise, if she was having problem in abdomen, after the alleged assault, instead of taking rest, she visited the police station in the evening of 03.04.2011 and also on 05.04.2011. It is not understandable if she was feeling unrest because of blows allegedly given by accused persons, then why she went to Chhappar Police Station on 05.04.2011 at the cost of her health. It appears that she was not having any problem, otherwise, she would not have visited the Police Station on 05.04.2011 after one day of the alleged occurrence.

22. Dr. Rajiv Mittal, Medical Officer, Civil Hospital, Rohtak, examined as PW-1, who firstly examined ‘M’, though noticed the abrasions on

the person of complainant, but there was no history of bleeding per vaginum and no bleeding per vaginum was seen.

23. None of the Doctors examined on record, has deposed that he treated the patient-complainant and the pregnancy of complainant got terminated due to such injuries sustained by her or the cause of miscarriage or termination of her pregnancy or she was having pregnancy of such days, week or months. There is no definite opinion or documentary evidence in this regard or medical record relating to complainant from 04.04.2011 to 07.04.2011, on case file. As per husband 'S' PW-5, her condition was critical and she was bleeding, then how did she managed to go in the office of Superintendent of Police, Yamuna Nagar on the same day and after one day of the alleged incident, it is not told on file. They stayed in Sector-32, Chandigarh for two days. Why her ultrasound was not conducted then and there or why she was not treated there, the same has also not been validly explained by the complainant or her husband in their deposition. There is no evidence that how much old foetus, complainant was having on the date of incident. As per her, her pregnancy was terminated on 08.04.2011, in Hospital, Sector-6, Panchkula and if it is taken to be a correct version, it cannot be said that it was the result of the alleged assault, being lack of evidence on this point and also there is no evidence on record that it was within the knowledge of accused that she-complainant was having pregnancy or they did such alleged act with intention of prevented her child from being born alive.

24. To attribute intention to cause miscarriage, accused must be in knowledge of the fact that the lady was in family way or having pregnancy. In the present case, as noted above, it has nowhere come in evidence that accused were aware of the fact that complainant was pregnant. The evidence for proving the essential ingredients of offence punishable under Section 316 of Indian Penal Code, 1860, is lacking on file.

25. All the accused (one expired during the proceedings of the case) have allegedly administered beatings to complainant as well as her husband, with the help of dandas and only abrasions with slight diffuse swelling were noticed on their person and Doctor Rajiv Mittal PW-1 has admitted that the possibility of the injuries on both injured with friendly hand cannot be ruled out. Had that been so, there should have been associate contusion, which were not present on their person. Doubt appears in the prosecution version in respect of manner, in which incident in question has taken place.

26. There is no material on record to show that any injury was caused on the back side of complainant nor on the person of the complainant, though beaten by eight persons with dandas, at any point of time. In any case, it was merely an abrasion and, therefore, cannot be safely attributed or related to the incident.

27. In the instant case, the evidence of the witnesses PW-4 'M' Complainant and PW-5 'S' Husband of Complainant is not reliable. As per them, all the accused attacked upon complainant with dandas, however, as per MLR, they sustained abrasions only or to say only simple hurt was caused, though the accused allegedly came there with an intention to attack upon them. Though, for the Injury No.1, PW-5 'S' Husband of complainant was advised X-ray and surgeon opinion and for Injury No.2, he was advised X-ray and ortho opinion, but neither X-ray Report nor surgeon as well as ortho opinion are on file. Strangely enough, both husband and wife were rescued by Shamsheeda, Saddam, Sabil Ahmad, Mohammad Yasin and Mohammad Salim, but none of them, who were statedly present at the spot, have been examined on record for the reasons best known to the complainant."

8. Accordingly, the sum and substance of the above said findings of the learned trial Court are that: though the applicant has alleged that she was beaten with dandas by 8 people/accused, however, the only

injuries she has suffered on her person are abrasions; as per testimony of Dr Rajeev Mittal/PW1, the possibility that the said abrasions/injuries on the applicant and her husband were inflicted by friendly hand cannot be ruled out; there is nothing whatsoever on record to suggest that the respondent-accused were aware of the fact that the applicant was pregnant at the time; none of the doctors examined have testified that the pregnancy of the applicant got terminated due to the above said injuries; as per testimony of the husband of the applicant, the applicant was bleeding. However, there is no evidence either oral or documentary to support the said statement of the husband of the applicant.

9. On the contrary, it has come on record that husband of the complainant and Shaukat Ali/respondent No.1 herein were having inimical terms; and the present complaint was instituted only when after investigation, the police had found the allegations of the applicant to be false. Accordingly, learned trial Court had correctly found the prosecution case to be highly doubtful and held as follows:-

“31. The enmity between the parties coupled with the other factors i.e. the medical evidence which does not tally with ocular version and the Enquiry Report Ex.DC, as noted above, impels to hold that the testimony of interested witnesses or the solitary statement of complainant, cannot be believed, in the absence of independent corroborative evidence on record. The medico legal evidence belies the ocular version of the witnesses and the contradictions in the statements of witnesses materially altered the incident itself and other attending circumstances on record, which has created a doubt over the

prosecution story. The evidence of prosecution is not of sterling quality.”

10. Learned counsel for the applicant is unable to dispute or controvert the above said findings returned by the learned Court below. Nothing whatsoever has been pointed out to this Court, or produced before this Court to suggest that the above said findings of the learned trial court are erroneous.

11. Accordingly, I find no ground is made out to interfere in the impugned judgment. Instant criminal miscellaneous application seeking leave to file appeal being completely devoid of any merit is **dismissed**.

12. 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