

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

CRM-A-1720-MA-2017 (O&M)

Date of Decision: 16.02.2023

Paro Devi

..... Applicant

Versus

Mandeep and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Tara Chand Dhanwal, Advocate, for the applicant.

Rajesh Bhardwaj, J.

The applicant has filed the application under Section 378(4) Cr.P.C. for grant of leave to file an appeal against the impugned order dated 07.02.2017 passed by the learned Sub Divisional Judicial Magistrate, Loharu, whereby, the complaint filed by the applicant-complainant was dismissed and respondents-accused were acquitted from the charges framed against them. The present application has been filed with a delay of 89 days in filing thereof.

Adumbrated facts of the case are that the present complaint was filed by Paro Devi under Sections 109, 114, 147, 148, 149, 323, 325, 341 and 506 IPC against the accused-respondents. It was alleged that on 28.08.2012 at about 8/9:00 pm, the accused-respondents formed an unlawful assembly and opened attack on the complainant and her family members. Jagdish son of Hosiyar Singh, Manoj son of Dharampal gave beatings to brother-in-law of complainant. Other accused also joined them and gave beatings to them. On raising their alarm, accused escaped from scene of occurrence. Thereafter Sunil son of Rama Nand arranged a vehicle and admitted the complainant at CHC, Loharu from where she was further referred to General Hospital, Bhiwani. From Bhiwani, she was further

referred to Medical College, Rohtak, PGI. Thereafter, the present complaint was filed by complainant-Paro Devi. The complainant led preliminary evidence and the accused were served. Then the complainant led pre-charge evidence and then accused were charge-sheeted and tried and on conclusion of the trial, learned trial Court after hearing both the sides dismissed the complaint filed by the complainant and thus, acquitted the accused-respondents from the charges framed against them vide impugned order dated 07.02.2017. Aggrieved by the same, the applicant-complainant has approached this Court by way of filing the present application for grant of leave to file appeal.

It has been vehemently contended by learned counsel for the applicant that the learned trial Court has miserably failed in appreciating the evidence on record. He submits that the complainant produced six witnesses i.e. CW-1 to CW-6. He submits that the complainant herself appeared as CW-5, whereas, to prove the MLR in support of the injuries suffered Dr. Achal Gupta appeared as CW-3 and Dr. Dharaminder Singh, appeared as CW-6, who duly corroborated the ocular version of the witnesses. He has submitted that after occurrence the complainant approached the police for recording her version by way of registering the FIR, however, the Investigating Agency never recorded the FIR at the behest of the complainant and thus, she had no other option than to file the complaint. He submits that the learned trial Court misread the evidence on record, thus, there is perversity in the findings arrived at by it. As a result, the opinion drawn by the learned trial Court in acquitting the accused being perverse, deserves to be set aside and the accused-respondents be convicted for the charges framed against them.

Heard.

After hearing learned counsel for the applicant and perusing the record, it is apparent that the occurrence in question has taken place on 28.08.2012, whereas, the complaint was filed by the complainant-applicant on 30.01.2013 i.e. after a period of about five months. Learned trial Court has appreciated the evidence on record and found material contradictions in the testimonies of complainant, Paro Devi and injured Rama Nand. The deposition of the complainant and witnesses would seriously doubt the case put forward by the complainant regarding the presence of the witnesses at the time of occurrence. It is further evident from the record that injuries were also suffered by the accused side i.e. Sandeep, Krishan, Rajbir and Manjeet on the same day i.e. 28.12.2012 and were proved by Dr. Dharmender Singh. The FIR was also lodged against the complainant at the behest of the accused, however, as submitted by learned counsel for the applicant, the applicant was acquitted. The present complaint was lodged after an unexplained delay of five months and there are material contradictions in the depositions of the complainant as well as the injured.

As per the law settled, the appeal against conviction and that against acquittal rests entirely on different pedestal. 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 the findings of acquittal arrived at by the trial Court in a cavalier manner 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. There is inordinate delay of 89 days in filing the main application, which has not been explained satisfactorily. Resultantly, the present application for grant of leave to appeal is dismissed on merits as well on the ground of delay and latches.

16.02.2023
sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No