

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

109 CRM-A-1748-MA-2017 (O&M)
Date of Decision: 13.09.2023

Sukhwinder Singh ...Applicant

Vs.

Manjinder Kaur ...Respondents

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

Present : Mr. Naveen Batra, Advocate
for the applicant.

N.S.SHEKHAWAT, J. (Oral)

CRM 24900 of 2017

1. The applicant has filed the present application under Section 5 of the Limitation Act for condonation of delay of 18 days in filing application for special 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 18 days in filing the application for special leave to appeal is ordered to be condoned.

CRM-A-1748-MA-2017

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

the impugned judgment dated 17.02.2017 passed by the Judicial Magistrate 1st Class, District Hoshiarpur, whereby, the respondent has been ordered to be discharged.

2. As per the case of the prosecution, the respondent No. 1 had approached the applicant with a false assurance that she could send him Abroad. In February 2007, as she was working as a travel agent alongwith one Gurmail Singh, her cousin, she promised the applicant that she would arrange him five years work permit in Italy and for that she would charge Rs. 9 lacs from him. The applicant agreed to pay a sum of Rs. 7.50 lacs in advance and the balance was to be paid after obtaining the Visa. It was promised by the respondent/accused that she would arrange the visa within a period of six months. As per the agreement between the parties, the applicant had paid a sum of Rs. 7.50 lacs to the respondent and her co-accused Gurmail Singh from time to time. Even both the accused had promised and assured the applicant that they would send him to Italy within a period of six months and in case they failed to do so, then whole of the money will be returned to him with interest. The respondent and co-accused made him wait till May 2010, but nothing happened from the side of the respondent rather they started threatening the applicant and even refused to return his passport. Ultimately, a Panchayat was held in village Hussainpur Guruka and the respondent appeared and admitted that she had received a sum of

Rs. 7.50 lacs from the applicant and promised to repay the amount till 17.06.2010, however, she refused to come in the Panchayat and also refused to make the payment to the applicant. On 24.06.2010, the applicant moved an application to the police, but no action was taken. Apart from that, inspite of registration of the FIR, no action was taken by the police against the respondent and her co-accused.

3. Learned counsel for the applicant vehemently argued that in the present case, the respondent was working as travel agent alongwith Gurmail Singh, her cousin. Even, the applicant had examined several witnesses and the Panchayat proceedings were proved on record as Ex.CW3/A, vide which, the respondent admitted to repay the amount of Rs. 7.50 lacs. Still further, she also admitted that she had taken a sum of Rs. 7.50 lacs from the present applicant and she will repay the amount. Even the trial Court had wrongly observed that the respondent was not working as a travel agent. Rather by projecting herself to be a travel agent, the amount was taken from the applicant and the impugned judgment is based on misappreciation of evidence and the settled law.

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

5. At the very outset, it is observed that in the present case, complaint was filed by the complainant/applicant under Sections 406, 420 and 120-B IPC before the Court of Judicial Magistrate 1st Class,

Hoshiarpur. During the course of the trial, the applicant had led pre-charge evidence and had examined certain witnesses in support of his case. However, after the pre-charge evidence was closed, the trial Court had considered framing of charge on the basis of pre-charge evidence led by the applicant and the trial Court came to the conclusion that there was no ground for framing of the charge against the accused and the respondent was ordered to be discharged by the trial Court. Consequently, the applicant could challenge the said order by filing a revision petition either before the Court of Sessions Judge under Section 399 Cr.P.C. or before this Court by way of filing a petition under Section 401 Cr.P.C. However, the applicant chose to file an appeal with a prayer to grant special leave to appeal against the impugned judgment under Section 378(4) Cr.P.C. and the said petition was not at all maintainable. The respondent was only ordered to be discharged and was never acquitted by the trial Court. Consequently, the present appeal against acquittal filed by the present applicant was not maintainable.

6. Apart from that, even on merits, the applicant had failed to prove the case against the respondent during the pre-charge evidence. Even essential ingredients of the offence of breach of trust, cheating were completely missing. Since the present petition is held to be not maintainable, there is no need to go into the merits of the

case in detail and the present application for grant of leave to appeal deserves to be dismissed by this Court.

7. Thus, finding no merits, the application for leave to appeal is dismissed.

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

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

13.09.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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