

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

**CRM-21017-2019 & CRM-3049-2014 in/&
CRM-A-133-MA-2014
Date of Decision: 10.02.2023**

Tarsem Singh

--Appellant/Applicant

Versus

State of Punjab & others

--Respondents

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

Present:- Mr. Kuldip Sanwal, Advocate for the appellant-applicant.

RAJESH BHARDWAJ.J

CRM-21017-2019

Application is allowed as prayed for.

Annexures P-1 to P-18 are taken on record.

CRM-3049-2014

This is an application seeking condonation of delay of 48 days that has occurred in filing the accompanying application for leave to appeal.

It has been contended by learned counsel for the applicant that applicant was advised that the limitation period for filing the criminal revision is 90 days as the impugned judgement was revisable, however, later on, he was informed that instead of the revision an application for leave to appeal would lie and for filing the same limitation period was 60 days only. Counsel submits that on account of the same there occurred a delay of 48 days in filing the application. He submits that applicant would suffer an irreparable loss if the aforementioned delay is not condoned.

In view of the averments made in the application, same is allowed. Delay of 48 days in filing the accompanying application for leave to appeal is condoned.

CRM-A-133-MA-2014**CRM-A-133-MA-2014**

The present application for leave to appeal has been filed impugning the order dated 11.10.2013, passed by learned Addl. Sessions Judge, Gurdaspur, whereby the complaint filed under section 3 of SC/ST (Prevention of Atrocities) Act and section 506 IPC, P.S. Dhariwal, was dismissed.

Learned counsel for the applicant submits that the complainant was in physical cultivating possession of land measuring 10 kanals comprising of Killa No.8/26 and 8/27 situated in the revenue limits of village Noshehar Majja Singh for the last more than 40 years. The accused-respondents no.2 to 5 belonged to one party and they wanted to grab the above said land by illegal means. He alleged that the accused-respondents belonged to Jat caste whereas the complainant belonged to Julaha caste which had been declared by the Govt. as a Scheduled Caste. Complainant had also constructed his residential house on the said land and also installed a Tubewell. On 3.8.2003 at about 4.00 PM all the accused persons along with the police entered the aforesaid land. They raised Lalkara to catch hold of the complainant/appellant by uttering the words "Kuta Julaha". They further exhorted that if the complainant does not allow them to take possession of the land then he along with his family members would be killed. It was alleged that thereafter the accused persons cremated the dead body of Lajo in the garden of complainant and damaged the said garden, whereas there was no cremation ground on the said land. It is submitted that the applicant-complainant was insulted in public by calling him "Kuta Julaha" and as the police did not take any action, hence he filed the complaint in question. Complainant led the preliminary evidence wherein

he examined Budha Singh as CW-1, Sucha Singh as CW-2, Bhupinder Singh as CW-3, Siria Deen as CW-4 and he himself stepped into witness box as CW-5. After hearing the preliminary evidence accused persons were summoned to face trial vide summoning order dated 2.3.2007. It is submitted that after 29.3.2011 case was fixed for 25.4.2011 and on 25.4.2011 Tarsem Singh complainant was duly present but in the interim order it was mentioned that no CW was present. It is submitted that the police refused to register the FIR on the complaint filed by the complainant. It is further submitted that the Trial Court had failed to appreciate the evidence on record and thus has drawn a wrong conclusion in acquitting the accused persons-respondents and thus the impugned order deserves to be set aside by convicting the accused persons-respondents for the offence they committed.

I have heard learned counsel for the applicant at length and have gone through the record carefully.

From the perusal of the record it is apparent that the applicant had filed a complaint before the learned SDJM, Gidderbaha. He got examined CW-1 to CW-5 in the preliminary evidence on the basis of which the court summoned the accused persons. During trial the prosecution examined complainant Tarsem Singh as PW-1, Samir Ahmed, Rent Controller as PW-2, Bahar Ahmed as PW-3 and Harpreet Singh as PW-4. As per the findings of the Trial Court complainant was afforded 17 opportunities including two last opportunities for his cross-examination, however, neither did he step into the witness box for his cross-examination nor he produced any other evidence. His examination/statement being incomplete could not be read against the accused. The official witnesses

proved on record that the complainant-applicant was in possession of the land, however, they could not prove regarding the occurrence as alleged in the complaint and regarding the offence committed by the accused persons. No evidence was produced before the Trial Court in support of the castiest remarks alleged against the respondents-accused under the Atrocities Act. Resultantly, there being no evidence on record the learned Trial Court had to dispense with the recording of statement under section 313 Cr.P.C and thus acquitted the respondents from charges framed against them.

It is a settled proposition of law that the law relating to the appeal against acquittal rests upon a different pedestal than an appeal against the conviction. The appellate court can interfere only when there is perversity in the findings. Once the accused is acquitted there lies double the presumption of innocence in his favour. The appellate court cannot intervene in the case of acquittal in a cavalier manner. The interference can be in a situation when there are perversities in the findings arrived at by the Trial Court. If there are two views possible then the one favouring the accused should be adopted. The Appellate Court should refrain from interfering in the acquittal in a mechanical manner and it is only in the case of perversity that the appellate Court should interfere. It has been reiterated by the Apex Court time & again that after acquittal, there lies double the presumption of innocence in favour of the accused. ***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:

“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.”

Keeping in view the overall facts and circumstances of the case and evidence adduced on record on the anvil of the law settled, this Court finds no infirmity in the conclusion arrived at by the learned Trial Court in acquitting the accused and hence the application for leave to appeal being devoid of merit, is hereby declined.

(RAJESH BHARDWAJ)
JUDGE

10.02.2023

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No