

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

220

CRM-A-465-MA-2015 (O&M)
Date of Decision: 13th September, 2023

Mohal Lal

... Applicant

Versus

Jaswant Lal

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Akshit Mehta, Advocate for
Mr. Johan Kumar, Advocate for the applicant.
Ms. Pratibha Yadav, Advocate for the respondent.

AVNEESH JHINGAN , J.(Oral)

CRM-9764-2015

1. This is an application for condonation of delay of 21 days in filing the application under Section 378(4) Cr.P.C.
2. Notice in the application was issued on 31.8.2017.
3. For the reasons mentioned in the application, delay of 21 days is condoned.

Main case

4. This application under Section 378(4) has been filed aggrieved of the acquittal of the respondent in a complaint case.
5. Brief facts are that the applicant filed a complaint under Sections 452, 427, 323, 506, 147, 420, 379 IPC, 1860 claiming that he is owner in possession of shop No. 95 Marble Market, Sector 33-34 Gurgaon. The shop was allotted to him by HUDA. The allegations were that the respondent (cousin brother of the complainant) while advancing a loan of Rs. 8,16,376/- got signatures on blank papers and made MOU claiming himself to be owner of half of the shop. Further, it

disposes the complainant. A civil suit for declaration with consequential of permanent injunction was filed in which a Local Commissioner was appointed who submitted report on 28.7.2008. As per the complainant on 26.7.2008 the respondent along with three-four unknown persons armed with '*lathis*' and '*kassis*' forcibly trespassed the shop, broke the locks, inflicted injuries to complainant and his brother-in-law (Gautam). The accused stole the marble and documents. The complainant to prove the allegations examined four witnesses including himself. It would be appropriate to mention that the respondent was charge-sheeted only under Sections 452, 323, 427, 379, 420 and 506 IPC, 1860. On failure of the complainant to prove the case beyond the reasonable doubt, the respondent was acquitted.

6. Learned counsel for the applicant submits that the Court erred in acquitting the respondent and had not taken into consideration the report of Local Commissioner wherein it was stated that lock of the shop was broken.

7. Learned counsel for the respondent defends the impugned judgment of acquittal.

8. The complaint was dismissed after considering the facts and appreciating the evidence adduced. It was taken note of that there was no corroborating evidence that injuries sustained by complainant and Gautam were inflicted by the respondent. No medical evidence was produced.

9. Further the complainant admitted in the cross-examination that the respondent was in possession of the half share of the shop. No evidence was produced to substantiate the allegations that the marble was removed or destroyed by the respondent. Coupled with the fact that

the complainant had not produced bills or documents to show the ownership of the marble allegedly stolen. Moreover, the complainant admitted that the shop in which marble was kept was in joint possession with the respondent. The shop of the complainant was situated in a market and none of the neighbourer were examined for fortifying the allegation of theft. *Albeit* the factum of respondent advancing loan to the complainant was admitted but there was no proof of respondent obtaining signatures on the blank papers.

10. There cannot be re-appreciation of the evidence at this stage. The contention raised by the applicant that the report of the Local Commissioner was not considered lacks merit. It is undisputed fact that Local Commissioner was not present at the spot when the alleged incident took place. His report was not an evidence to the effect that the respondent trespassed, inflicted injuries and committed theft.

11. No case is made out for grant of leave to appeal as no legal or factual error, much less perversity, has been pointed out in the impugned judgment. The conclusion arrived at by the trial court is a plausible one.

12. The application is dismissed.

13. Since the main case has been dismissed the pending application(s), if any is rendered infructuous.

(AVNEESH JHINGAN)
JUDGE

13th September, 2023

anuradha

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No