

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRR-1235-2023 (O&M)

Date of decision: 25.09.2023

Sarabjit Kaur

...Appellant(s)

Vs.

State of Punjab and Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Prince Sharma, Advocate
for the appellant.

Mr. Jaswinder Singh Arora, DAG Punjab.

NIDHI GUPTA, J.CRM-21398-2023

This is an application under Section 5 of Limitation Act seeking condonation of delay of 1411 days in filing the present Criminal Revision Petition.

The only ground cited in the present application for condoning the extraordinary delay of 1411 days is that *"when the order dated 1.10.2022, came to the knowledge of the petitioner, then she immediately approached the undersigned Counsel on 15.12.2022, for filing the present revision before this Hon'ble Court"*. In my view this does not constitute sufficient reason or ground that merits the condonation of such inordinate and extraordinary delay of 1411 days in filing the present Criminal Revision Petition.

Present application accordingly stands dismissed.

MAIN CASE

Present appeal is filed against judgment dated 07.12.2018 passed by the learned Additional Chief Judicial Magistrate, Tarn Taran in case titled as "State Vs. Dilbagh Singh & Others" whereby accused/respondents No.2 to 6 have been acquitted in case FIR No.80 dated 05.07.2013 under Sections 354, 323, 452, 148 and 149 IPC registered at Police Station Jhabal.

2. Brief facts of the case as set out by the petitioner/complainant are that on 05.07.2013, the complainant/petitioner approached the police and got recorded her statement to the effect that on 05.07.2013, she was at her house, when the accused persons armed with deadly weapons forcibly entered her house and started doing indecent activities with her. Upon her raising alarm, her son namely Gursewak Singh came there and he was also beaten up by the accused persons and both of them raised hue and cry, hearing which, several persons gathered there and Nirvail Singh s/o Bahal Singh, Sukhwinder Singh s/o Jarnail Singh, residents of village Gaggobua saved them from the clutches of the accused and on seeing people gathering, the accused persons ran away from the spot along with their respective weapons. Thus, on the statement of complainant/petitioner, present FIR was registered against the accused persons/respondents No.2 to 6.

3. Learned counsel for the petitioner inter alia submits that the learned trial Court is in patent error in acquitting the accused persons/respondents No.2 to 6 herein vide its judgment dated 07.12.2018.

It is submitted that the petitioner had led cogent and comprehensive evidence both documentary and oral, in support of her allegations. It is submitted that although there is no medical record of the injuries caused by the accused persons yet the corroborative testimony of the witnesses examined by the prosecution could not be doubted. It is contended that even defence of alibi brought on record by the accused persons is doubtful as the place of occurrence is hardly 10 kms away from the place where the accused claimed to be present at the time of incident. It is submitted that accordingly, respondents No.2 to 6 be convicted and sentenced in accordance with law, in the interest of justice.

4. No other argument is made on behalf of the petitioner.

5. I have heard learned counsel for the petitioner.

6. Perusal of record of the case shows that in support of its case, the prosecution had examined eye-witness, son of the petitioner namely Gursewak Singh as PW2, eyewitness Nirvail Singh s/o Bahal Singh as PW3, and eyewitness Sukhwinder Singh s/o Jarnail Singh as PW4, all of whom had reiterated the prosecution case in their respective testimonies. The learned trial Court upon consideration and appreciation of the documentary and oral evidence on record, as also the pleadings and submissions made on behalf of the parties, had acquitted the accused persons/respondents No.2 to 6 by holding as follows:-

“18. As discussed above in the preceding paragraphs of this judgment, the testimony of the independent witnesses being discrepant and the testimony of Nirvail Singh being modified due to his grievance that accused Gurbinder Singh as well as

not worthy of credence since witnesses of the prosecution could not support the complainant as regard to causing of beatings or alleged indecent activities. There being no medical evidence on record to believe the case of the complainant. No immediate available neighbour having been examined and also her own mother-in-law has not been examined for the reasons best known to the complainant creates a reasonable dent in the story of the prosecution. It is not credible that five persons attacked unarmed mother and son duo and no injuries were caused, shows doubt in the story of the prosecution. Accordingly, the prosecution in the considered view of this Court has failed to establish its case to bring home guilt of the accused beyond reasonable doubt and hence the accused are hereby ordered to be acquitted of the charges under Sections 354, 452, 148, 149 of the IPC.”

7. Further perusal of the impugned judgment reveals that the petitioner had alleged that the accused were inimical towards her due to party faction. However, during her cross-examination, she could not point out anything to prove the alleged party factionalism.

8. It has also been established on record that the accused were not present at the place of occurrence on 05.07.2013, at about 3-3.30 PM when the incident is alleged to have taken place. As per the findings on record, at the said time the accused were present at Gurudwara Bir Baba Budha Sahib, which fact has been corroborated by the testimony of the Granthi Sahib Singh.

9. Learned counsel for the petitioner is further unable to explain to this Court as to why there were no injuries found on the person of the petitioner/complainant despite the fact that she had alleged that she

and her son were attacked by 5 persons/respondents No.2 to 6 herein, who are stated to have been armed with deadly weapons. Even PW4 in his cross-examination has admitted that no injuries were inflicted on the petitioner by the accused persons.

10. Furthermore, though it was stated by the petitioner in her testimony, that when she was attacked by the accused respondents, upon hearing her hue and cry, several persons including mother-in-law of the petitioner, had gathered at the place of occurrence. However, none of these persons have been examined as witnesses by the prosecution.

11. Further perusal of the impugned judgement reveals that there are material discrepancies in the testimonies of the witnesses produced by the prosecution. Material witnesses like the mother-in-law of the complainant who is stated to have been present at the scene of occurrence, at the time of attack, has not been examined by the prosecution. Furthermore, learned counsel for the petitioner is unable to show anything to this Court or produce any evidence whatsoever to controvert the above said findings of the learned Trial court. Thus, I am in concurrence with the reasoning of the learned trial Court that guilt of the accused persons is not established beyond reasonable doubt.

12. Moreover, the record reveals that the petitioner had challenged the above said order dated 07.12.2018 passed by learned Additional Chief Judicial Magistrate, Tarn Taran by way of appeal bearing No.CRA-4-2019, which was accompanied by an application for condonation of delay; and the same was dismissed by learned Additional Sessions Judge,

Tarn Taran vide order dated 09.03.2021, for want of prosecution. Order dated 09.03.2021 reads as follows:-

“The present appeal having been preferred beyond the prescribed period of limitation, is accompanied by an application under Section 5 of the Limitation Act whereby prayer for condonation of delay in filing the appeal has been made.

Accordingly, the case today is fixed for consideration on the said application but despite repeated calls since morning, none has come present on behalf of the appellant-applicant. It is 3:40 p.m. now and the case having once again been called, none has responded to such call on behalf of the appellant-applicant. Even otherwise, on going through the application, it emerges out that there is no ground worth the name what to talk about sufficient ground put forth by the appellant-applicant justifying her prayer for condonation of delay in filing the appeal.

As a result, the application under Section 5 of the Limitation Act stands dismissed for want of prosecution and as a consequence, the appeal stands also dismissed. File be consigned to Record Room and summoned records be also returned separately.”

13. Thereafter, the petitioner had filed application for restoration of aforesaid appeal which was also dismissed by learned Additional District and Sessions Judge, Tarn Taran vide order dated 01.10.2022 as not maintainable. Order dated 01.10.2022 is reproduced hereinbelow:-

“This order of mine shall dispose of application filed for seeking restoration of criminal appeal bearing CRM No.29 of 2019 which was dismissed vide order reproduced as under:-

“Present: None for appellant-applicant

All respondents on bail with counsel.

The present appeal having been preferred beyond the prescribed period of limitation, is accompanied by an application under section 5 of the Limitation Act, whereby prayer for condonation of delay in filing the appeal has been made.

Accordingly, the case today is fixed for consideration on said application but despite repeated calls since morning, none has come present on behalf of the appellant-applicant. It is 3:40pm, now, and the case having once again been called, none has responded to such call on behalf of the appellant-applicant. Even otherwise, on going through the application, it emerges out that there is no ground worth the name what to talk about sufficient ground put forth by the appellant-applicant justifying her prayer for condonation of delay in filing the appeal.

As a result, the application under section 5 of the Limitation Act, stands dismissed for want of prosecution and as a consequence, the appeal stands also dismissed. File be consigned to the record room and summoned records be also returned separately.”

Without going into the merit of the application, the present application amounts to review of the order of my Predecessor which as per section 362 of Cr.P.C is not possible. Section 362 Cr.P.C reproduced as under

“Save as otherwise provided by this Code or by any other law for the time being in force, no court, when it has signed its judgment or final order disposing of a case, shall alter or

review the same except to correct a clerical or arithmetical error”

Therefore, I find the present CRM is not maintainable and the same be dismissed. File be consigned to the record room.”

14. Now, the petitioner has approached this Court by way of the present Revision petition, after a delay of 1411 days. It may be pointed out that in the present revision petition, there is no challenge to the order dated 09.03.2021 whereby appeal filed by the petitioner was dismissed on grounds of delay/non-prosecution; and/or order dated 01.10.2022 whereby petitioner’s application for restoration of the above said appeal was also dismissed.

15. Accordingly, in view of the facts as noted herein above, I find no merit in the present revision petition, and same is hereby **dismissed.**

16. Pending application(s) if any also stand(s) disposed of.

25.09.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No