

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

228

CRM-A-693-2019 (O&M)  
Date of Decision: 21.08.2023

Jagdish Chander

...Petitioner

Vs.

Shivani

...Respondent

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

Present : Mr. Kamaldeep Sindhu, Advocate  
for the applicant.

**N.S.SHEKHAWAT, J. (Oral)**

**CRM 10382 of 2019**

1. The applicant has filed the present application under Section 5 of the Limitation Act for condonation of delay of 28 days in filing the application for grant of 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 28 days in filing the application for leave to appeal is ordered to be condoned.

**CRM-A-693-2019 (O&M)**

1. The applicant has filed the present application under Section 378(4) Cr.P.C. with a prayer to grant special leave to appeal against the impugned judgment dated 02.11.2018 passed by the Chief

Judicial Magistrate, ferozepur, whereby, the respondent was ordered to be acquitted of the notice of accusation under Section 500 IPC.

2. As per the applicant, the respondent was married to Rajiv Kumar son of the applicant on 25.11.2011. She had moved a false complaint against the applicant and his family members, just to harass and humiliate them. She had leveled false allegations of demand of dowry and had wrongly prayed that a criminal case should be registered against them. The police had interacted with the applicant and his other family members. However, finally the police exonerated the applicant and his family members from the false and frivolous allegations leveled by the respondent/accused. However, in the said FIR No. 52/2013 under Sections 406 and 498-A IPC, Police Station Cantt., Ferozepur, Rajiv Kumar and Vijay Kumar, both sons of applicant/complainant were ordered to be arrested. As per the complainant, the respondent again moved a false complaint dated 11.09.2013 before DIG Ferozepur against the applicant and other family members. However, the matter was investigated by DSP (D), who found that there was no truth in the allegations leveled against the present applicant. The respondent also leveled false allegations against the applicant in her complaints dated 05.01.2013 and 11.09.2013.

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

4. Learned counsel for the applicant vehemently argued that in the present case, the applicant had proved the case against the respondent beyond the shadow of reasonable doubt. The applicant had examined himself as CW1, Onkar Singh as CW2 and Veena as CW3 and from the testimonies of the said three witnesses alone, the offence was proved against the three respondents. However, the trial Court committed grave error in ignoring the testimonies of the prosecution witnesses and the accused has been wrongly acquitted.

5. Having heard learned counsel for the applicant and after pursuing the record, I have arrived at a firm conclusion that there is no substance in the application filed by the present applicant.

6. The main allegations leveled by the applicant, who is father-in-law of the respondent is that on 05.01.2013, the respondent had made a false complaint to the SSP Ferozepur and after the inquiry, the police officials had found the applicant and his family members innocent. However, at the same time, the matter was investigated and both the sons namely Rajiv Kumar and Vijay Kumar were found involved in the commission of the crime. Still further, the trial Court has rightly held that the respondent did not have requisite intention and knowledge that such imputations will harm reputations

of a person. In fact, as per the respondent, she was harassed and humiliated by the applicant and other family members and she had made the complaints only with the intention to get her allegations investigated by the police and she had no intention to defame either the applicant or any other person. Still further, it is apparent that the applicant failed to prove that the respondent had the requisite intention and knowledge that such imputations will harm the reputation of the applicant. Still further, there was no publication of any defamatory matter and in good faith she had made complaints against the applicant and his family members and there was no malice on the part of the respondent.

7. Apart from that, the trial Court rightly held that the present complaint was lodged as a counter blast to the FIR alleged by the present respondent. Apart from that, CW2 Gurpreet Singh also admitted that grand daughter of complainant married her daughter with real brother of Shivani/respondent against the wishes of her parents and had also filed a protection petition before this Court. Even, CW3 Vijay Kumar also admitted that his daughter Gitika had solemnized marriage with the brother of the respondent, after running away from home. He also admitted the filing of protection petition by Gitika against him and other family members before this Court. Thus, it is evident that as a counter blast to the said litigation, the present

complaint has been filed by the applicant before this Court. Even otherwise, I have gone through the findings recorded by the trial Court. The trial Court has correctly held that there is nothing on record to show that the applications which are the basis of the present case, containing such imputations were circulated or published by the accused in any manner. In fact, the respondent had availed her legal remedies, strictly in accordance with the provisions of law and it cannot be held that the said applications had defamed the applicant in any manner.

8. It has been held by the Hon'ble Supreme Court in the matter of **"Bhaskarrao and others Vs. State of Maharashtra"**, **2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228** as follows:-

*"14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in **Tota Singh and Anr. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974** -*

*"The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for*

*discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappraisal, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a reappraisal of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."*

*15. In Ramesh Babulal Doshi v. State of Gujarat, 1997(3) RCR (Criminal) 62 : 1996 CriLJ 2867, this Court observed:*

*"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."*

9. Still further in **Criminal Appeal No(s.) 410-411/2015 [Ravi Sharma Vs State (Government of N.C.T. of Delhi) and another]**, decided on 11.07.2022, Hon'ble the Supreme Court has held as under:-

*"Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.') while deciding an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant*

*portion of a recent judgment of this Court in **Jafarudheen and Others v. State of Kerala (2022 SCC Online SC 495)** as follows:*

*“25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, 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.”*

10. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant application for leave to appeal is bereft of merit and without any substance; thus, it must fail. No case for interference has been made out. Consequently, the judgment dated 02.11.2018 passed by the Chief Judicial Magistrate, Ferozepur is ordered to be upheld.

10. Resultantly, with the above-said observations made, the application for special leave to appeal stands dismissed.
11. Pending application(s), if any, is also disposed off.
12. Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation for filing the appeal, in accordance with law.

21.08.2023

( N.S.SHEKHAWAT)

amit rana

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No