

230 **IN THE HIGH COURT OF PUNJAB AND HARYANA**
 AT CHANDIGARH
 CRM-A-135-2022 (O&M)
 Date of Decision:29.08.2023

Mukesh Baghel

...Appellant

Vs.

State of Haryana & Anr.

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Krishan Singh, Advocate
 for the applicant-appellant.

Mr. Gaurav Gurcharan Singh Rai, DAG, Haryana.

N.S.Shekhawat J.

CRM-16379-2022

1. The applicant/appellant has moved the present application under Section 5 of Limitation Act for condonation of delay of 28 days in filing the present appeal.

2. I have heard learned counsel for the applicant/appellant and for the reasons mentioned in the application, the minimal delay of 28 days in filing the present appeal is condoned.

CRM-A-135-2022

1. The applicant/appellant has filed the present application under Section 378 (4) Cr.PC with a prayer to grant special leave to appeal from the judgment of acquittal dated 18.12.2019 passed by the Court of CJM, Palwal, whereby the respondent No.2 was ordered to be acquitted of the charge under Section 18 of the Cable Television Network (Regulation) Act,1995 (hereinafter referred to as the "Act").

2. The complaint in the present case was initially filed by Sub-

Divisional Magistrate, Palwal by alleging that he had received letter No.6144 MB dated 03.06.2015 along with complaint and CD from Dinesh Kumar to take action under the “Act”. It was alleged that the local cable TV operator was violating the provision of “Act”. It was also alleged that local TV cable operator was displaying advertisement in violation of the “Act” and a CD was also obtained from District Information and Public Relation Officer Palwal. It was further alleged that the applicant along with DSP HQ and SHO City Palwal visited the premises of Cable Network on 26.08.2015 and found that the Fun Cable Network and ABC News channel was registered by Post Master NIT Faridabad vide Registration No.(CTN/FBD/794) ABC News Channel valid from 01.06.2014 to 31.05.2015 but the validity of Registration No. (CTN/FBD/606) of Fun Cable Pvt. Ltd. was from 07.09.2014 to 06.09.2015 and they also had discovered that the cable operator was showing mandatory Doordarshan Channel. It was further alleged that the applicant along with DSP HQ and SHO City Palwal checked the program and found that cable operator by showing the advertisement simultaneously with program in lower part of the screen was violating the provisions of Rule 7 (10) & (11) of CTN Rule 1994 and violated the Section 6 of the “Act”. It was further alleged that one relay transmitter equipments have also been seized.

3. Vide the impugned judgment, the Chief Judicial Magistrate, Palwal held as follows:-

“I have perused the documents and evidence available on case file very carefully. Prosecution has failed to prove his case beyond the reasonable doubt as there are many contradictions in the version of complaint and complainant witness. CW-1 SDM Satvir Singh in his cross-examination, admitted that he called the

DSP Headquarter and SHO Police Station City in his office. This witness further admitted that many shops were there nearby the office of Fun Cable Network but none of them was joined as a independent witness and also shown his ignorance with regard to notice served by him upon the accused and further failed to disclose the name of photographer called at the premises. No other witness including investigating officer of the present case was examined by the prosecution inspite of availing sufficient effective opportunities granted to them and due to non-examination of investigating officer many documents remained unproved on case file. Even otherwise, after receiving the complaint under the Act, a committee is required to demand VCD and it is only when committee opines that provisions of the Act have been violated, a show cause notice has to be served upon the accused and an opportunity of filing the reply has also to be given but no such procedure was followed in the present case. There is nothing on case file to suggest that accused was simultaneously showing advertisement with the program in the lower part of the screen. There are number of contradictions in the prosecution story and totality of circumstances taken together creates serious doubt in the prosecution story. Keeping in view the contradictory statements of the witnesses examined by the prosecution, a serious doubt is raised on the story of the prosecution and benefit of doubt is given in favour of accused person. Accused namely Surender Garg has been acquitted of the notice of the accusation served upon him under Section 16 of the Cable Television Network (Regulation) Act, 1995 by giving benefit of doubt in his favour.”

4. Challenging the said findings recorded by the Chief Judicial Magistrate, Palwal, Mukesh Baghel, the applicant/appellant has preferred the present application under Section 378(4) Cr.P.C. before this Court.

5. Section 378 provides for filing of an appeal against the judgments

of acquittal. Section 378 (4) is reproduced below for ready reference:

Appeal in case of acquittal:-

1.xxxxxxxxxx

2.xxxxxxxxxx

3.xxxxxxxxxx

4. *If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.*

5.xxxxxxxxxx

6.xxxxxxxxxx

6. From a perusal of Section 378 (4), it is evident that in case any judgment of acquittal is passed in a complaint case, only the complainant is competent to present the appeal against the said judgment of acquittal, before this Court.

7. In the present case, the complaint was initially filed by Sub-Divisional Magistrate, Palwal and not by the applicant/appellant. Only Sub-Divisional Magistrate, Palwal could have preferred an appeal against the judgment of acquittal passed by the Chief Judicial Magistrate, Palwal and the appeal filed by the applicant/appellant was not at all maintainable in view of the provisions contained in Section 378(4) Cr.PC. Even otherwise, I have gone through the impugned judgment passed by the Court of Chief Judicial Magistrate, Palwal and do not find any infirmity, illegality or perversity in the impugned judgment, warranting interference by this Court.

8. As a consequence, judgment of acquittal dated 18.12.2019 passed by the Court of CJM, Palwal is ordered to be upheld and application under

Section 378 (4) Cr.PC for leave to appeal is ordered to be dismissed.

29.08.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

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