

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

214

CRM-29730-2021 in/and
CRM-A-203-2021

Date of Decision: 14.09.2023

State of Haryana

.... Applicant

Versus

Aakil

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Arjun Lakhanpal, Addl. A.G., Haryana

NIDHI GUPTA, J.

CRM-29730-2021

Through the present application filed under Section 5 of the Limitation Act, prayer has been made for condonation of delay of 834 days in filing the accompanying criminal miscellaneous application under Section 378(3) Cr.P.C., seeking leave to file appeal against the judgment dated 26.09.2017, passed by the learned Additional Sessions Judge, Exclusive Court Nuh, whereby the respondent-accused herein, was acquitted in case FIR No. 19 dated 18.02.2017 registered under Sections 8 and 18 of the Protection of Children from Sexual Offences Act, 2012, at Police Station Ferozepur Jhirka.

It has been averred in the instant application that the Superintendent of Police, Nuh, after considering the opinion of the District Attorney, Nuh, sent all the relevant documents with remarks 'agree' to the office of learned District Magistrate, Nuh vide memo No.

19203 dated 30.10.2017 for filing appeal before this Court. The learned District Magistrate, Nuh after considering the opinion of the District Attorney had sent all the relevant documents to the office of the Advocate General Haryana, Chanidgarh on 08.11.2017 for filing the appeal before this Court. Thereafter, after completion of certain other long official proceedings and formalities i.e. grounds of appeal, typing of documents etc. as explained above, delay of 834 days has occurred in filing the accompanying application seeking leave to file appeal against the judgment of acquittal which is not intentional. Thus, it is prayed that the present application may be allowed and delay of 834 days may be condoned.

Heard.

It is well-settled proposition of law that each day's delay has to be explained in mathematical manner. Plea taken by the applicant-State of Haryana, for condonation of delay is being taken in routine manner and does not specify or provide details such as dates where the case file remained pending, causing such inordinately long delay. Much water has already flown. Now the time has come to deprecate and reject such type of frivolous pleas taken in routine to abuse the process of law. It is needless to mention here that every State Government or its functionaries are best litigants in the country. More than 50% of the litigation in the Courts of this country are filed on account of lapse or negligence of State machinery. No cogent reason or plausible explanation, save the reason mentioned hereinabove, has been furnished by the applicant-State for condonation of delay in filing the accompanying application under

Section 378(3) Cr.P.C. Therefore, the instant application filed under Section 5 of the Limitation Act for condonation of delay of 834 days is dismissed.

On Merits:

CRM-A-203-2021

Briefly, respondent/accused-Aakil was booked and tried in aforesaid FIR No. 19 dated 18.02.2017, registered on the basis of an application moved by the complainant/mother of the victim alleging therein that on 14.07.2017 at around 5:00 p.m., her minor daughter/victim along with her younger sister went to the fields for taking firewoods. The respondent/accused who was already present there started teasing her daughter/victim and caught her forcibly and took her inside the fields nearby. Her younger daughter ran out of fear and disclosed the entire incident to her. Thereafter, she rushed to the fields and picked her daughter/victim who narrated the whole incident and disclosed that the respondent/accused had sexually assaulted her with an intent to outrage her modesty. However, he could not succeed and fled away from the spot. The respondent/accused also threatened the victim with dire consequences, if, she narrates the incident to anybody.

After holding trial, the learned trial Court vide impugned judgment dated 26.09.2017, acquitted the respondent-accused of the charges framed against him.

Learned counsel for the applicant-State, *inter alia*, submits that the impugned judgment of acquittal is based on surmises and conjectures. It is contended that the learned trial Court has failed to

establish the identity of the victim and younger daughter of the complainant has been projected as victim; whereas as per allegations in the complaint actually the victim was the elder daughter of the complainant. The learned trial Court has also failed to consider the testimonies of the complainant and her two daughters in its right perspective, as they have categorically deposed before the trial Court what actually had taken place on the day of occurrence. Thus, the learned trial Court had wrongly acquitted the respondent-accused due to faulty investigation, rather a direction can be issued for further investigation in the matter under Section 173(8) Cr.P.C., when it came to its notice that investigation in the present case was faulty. It is further submitted that the evidence produced by the prosecution is sufficient and trustworthy to fasten the criminal liability against the respondent accused.

No other argument is raised on behalf of the applicant.

I have heard learned counsel for the applicant.

Perusal of the record of the case shows that the learned trial Court upon detailed appraisal of all the facts, pleadings, submissions, and documentary as well as the oral evidence produced on record, returned the following findings:

“23. In the present case, right from the very beginning, it was the case of the prosecution that on 14.2.2017 at about 5:00 p.m. the victim (PW6) had gone for taking firewoods from the fields alongwith her younger sister when accused who was already present at the spot caught hold the hand of the victim and pulled her inside the fields of wheat. It is further the case of the prosecution, that younger sister of the complainant ran towards her house and informed her mother/complainant (PW-5). Whereupon the complainant rushed towards the fields and found the victim who narrated the entire incident of sexual assault committed upon her by accused. Needless to say that when challan was filed in the

present case, the Investigating officer set out the case and projected the younger daughter of the complainant as victim and also got recorded her statement u/s 164 Cr.P.C. which was not exhibited in the present case by the prosecution for the reasons best known to it. Suffice to say that when the victim (PW6) stepped into the witness box she deposed as under:-

“Stated that on 14.2.2017, at about 5: p.m., I had gone to my field for taking wood stick. When I reached out field, at that time, accused Aakil was already present there and he caught hold my hand and pulled me towards the standing crops of wheat and asked me to take off my clothes but I did not do the same. On this accused threatened to kill me if I disclose this version to anyone. At this stage, ld. PP requested for opening the statement under Section 164 Cr.P.C. Mark-A which shown to the witness and she denied of making any statement before the ld. Magistrate volunteered statement was made by my sister.”

Similarly, younger sister of the victim (PW7) when appeared before the Court. She deposed as follows:-

“Stated that on 14.2.2017, at about 5:00 p.m., I and my sister Sehruna had gone to our field for taking wood stick. Accused Aakil was present there and he caught hold my sister Sehruna and he started harassing my sister. My mother came at the spot and after seeing her he ran away from the spot.

Now adverting to the facts of the present case, it is apparent that it was specifically alleged by the complainant (PW5) that accused committed sexual assault upon her elder daughter (victim) (PW6) but Investigating Officer without verifying the facts took U turn and projected younger daughter of the complainant as victim. The entire case of the prosecution is completely shattered by the dubious investigation carried out by the Investigating Officer. In the present case, the identity of the victim as well as yardsticks, on the basis of which the investigation has been conducted in the present case has made the entire case of the prosecution doubtful. Needless to say that present case was registered under Section 8 of POCSO Act but Investigating Officer has acted in a casual manner. Hence, identity of victim is not established in the present case. The allegations levelled against accused also does not prove upto the hilt. The victim was minor below 18 years of age is also not proved on record. Thus, charges under section 8 of POCSO Act does not prove against accused beyond reasonable doubt.

From the above facts, it is clear that in the present case inadequate investigation has been conducted by the Investigating Officer. Even the prosecution has failed to establish the identity of the victim. The complainant had specifically alleged that the respondent/accused had sexually assaulted her elder daughter, but the Investigating Officer, without verifying the facts had projected younger daughter of the complainant as victim which makes the entire prosecution story doubtful. It has also come on record that the public prosecutor failed to guide the Investigating Officer, who has submitted the challan report under Section 173 Cr.P.C. without verifying the facts. Learned counsel for the applicant-State, is unable to dispute or controvert the abovesaid findings as recorded by the trial Court. Even nothing has been produced before this Court to show as to why the abovesaid findings are incorrect or ought to be rejected.

Accordingly, I find that no ground is made out to interfere in the impugned judgment. The instant criminal miscellaneous application seeking leave to file appeal is **dismissed** on merits as well as on grounds of delay.

14.09.2023
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No