

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-31421-2016 in/and
CRR-3638-2016
Date of decision : 10.08.2023**

Piara Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. N.S. Sidhu, Advocate
for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

CRM-31421-2016

This is an application filed under Section 5 of the Limitation Act for condonation of delay.

There is delay of 29 days in filing the instant revision petition. As per the averments made in Para No.2 of the application, this Court is satisfied that the petitioner has made out a sufficient cause for condonation the delay. More so in view of the fact that revision was initially filed within well within the period of limitation and the delay occurred as the objections raised by the Registry could not be removed in time.

Resultantly, the application seeking condonation of delay

is allowed. Delay of 29 days in filing the revision petition is ordered to be condoned.

CRR-3638-2016

Complainant is in revision. Challenge is to the order dated 18th of May, 2016 passed by ASJ, Ferozepur whereby the accused/ respondents stand acquitted by giving them benefit of doubt.

2. Law was set into motion by the petitioner in the present case claiming that on 8th of February, 2013 at about 8:00 AM when he along with Manpreet Singh went to the house of one Ravinder Singh they were attacked by the accused namely Sukhmander Singh, Piara Singh and Amritpal Singh. FIR No.22 dated 14th of February, 2023 was registered. After investigation the accused were challaned for the offences punishable under Sections 295-A, 382, 323, 34 IPC. Trial Court convicted the respondents for offences punishable under Sections 382, 295-A IPC and acquitted them of offence punishable under Section 323 IPC and sentenced them as under :

Sr.No.	Name of Convict	U/S	Sentence to RI	Fine Rs.	In default of payment of fine.
1	Sukhmander Singh	382 IPC	11 months	4000/-	three months
		295-A IPC	6 months	2000/-	One month
2	Amritpal Singh	382 IPC	11 months	4000/-	three months
		295-A IPC	6 months	2000/-	One month

3. The relevant findings recorded by the Trial Court read as under :

“15. In the case in hand, upon reading evidence of above mentioned witnesses, we find that the testimonies of the witnesses are trust worthy. This we can say on account of the fact that their evidence has been consistent and they have also remained unshaken trying their cross-examination. Their testimony does not vary in any manner on any material fact and if there are any discrepancies, the same are trivial, immaterial, and could not be made the basis of acquittal. Moreover, the recovery memos of turban and mobile effected from accused proved as Ex.PW3/F and Ex. PW3/G respectively have further provided additional link to the chain of evidence. The mobile phone was taken on sapurdari by complainant Piara Singh and the production of the mobile phone from the custody of accused Amritpal goes against the accused and establishes the prosecution case. Further, the recovery of turban from accused Sukhwinder Singh proves that accused deliberately took the turban with them after toppling it from the head of the complainant to injure his religious sentiments by outraging his religious feelings. Complainant Piara Singh is Amritdhari Gursikh and injury on the turban of Gursikh is injury on the religion of Gursikh. It is highly unbelievable that Gursikh would falsely implicate a person on pretext of toppling his turban as nothing is more dearer to a Gursikh in our society than his turban. So the prosecution has been able to successfully bring home the guilt of the accused.

16. The argument of the defence counsel that there is delay in lodging the FIR is without force as complainant has categorically stated in his statement under Section 161 Cr. P.C and in his examination in chief and cross-examination that earlier there were chances of

compromise between the parties and that is why he could not report this matter earlier. The time of occurrence is also duly mentioned in FIR and his examination in chief at 8 AM. Regarding non-arraying of Ravinder Singh and Baljit Singh, Investigating Officer has stated in his cross-examination that as there was no role of these witnesses in the occurrence they were not joined in investigation. Further PW1 Piara Singh has also stated that Ravinder Singh came at the spot of occurrence after the occurrence has already taken place. Moreover, the testimony of defence witness has infact been favourable to the prosecution as he has himself admitted the dispute between the parties due to passage of agricultural land. Moreover, non-production of documentary evidence regarding sale of land by DW1 in favour of Manpreet Singh is also inconsequential in wake of clear testimony on this point of prosecution witnesses and further DW1 has nowhere mentioned in his affidavit that he has not sold the land to Manpreet Singh. However, in his cross-examination, he has admitted that he sold his land to Manpreet Singh and the said deal was finalized with the help of Piara Singh so thereby giving rhyme and reason to the prosecution story. He has only stated that on 8.2.2013, no such incident happened and complainant Piara Singh and Manpreet Singh never visited his house on 8.2.2013. His testimony to this effect is not reliable as he is interested witness being neighbourer of accused. He himself has stated that his house is just adjacent to the house of the accused in his affidavit. Further Piara Singh complainant has also stated in his cross-examination that house of accused is at a distance of about 1/1-1/2 acres from the house of the accused.”

4. The judgment of conviction was taken in appeal by the

respondents/accused. The Ld. Appellate Court while acquitting the accused observed as under :

“18. After giving my thoughtful consideration to the rival submissions, and on careful perusal of the record of the learned trial court, coupled with the due assistance rendered, the court finds merit in the submissions put forth by learned counsel for the appellants/ accused. The appellants being aggrieved from the impugned judgment of conviction, whereby they have been convicted of the offences under Sections 382 & 295-A of the Indian Penal Code, and have been sentenced as per the details elucidated in the judgment, have preferred the present appeal. It is worth making mention that firstly there is an inordinate delay in lodging of the FIR, as the occurrence as per the prosecution version took place on 8.2.2013 at about 8.00 A.M., but the FIR has been lodged on 14.2.2013 at 5.25 P.M. During the course of arguments, much stress has been laid by Learned Additional Public Prosecutor that efforts were being made for a compromise, but the testimony of the complainant when carefully scrutinized, it strengthen that as per him till the date of recording of his evidence, there was no effort qua any compromise regarding the dispute either at police station or in the panchayat. Thus, the factum as to the effort being made for a compromise in the panchayat, and the delay having been occurred on account of the said fact in lodging of the FIR, stands nullified.

19. It is further pertinent to make mention that as per the complainant, the land of accused Sukhmandar Singh is abutting the katcha Path, and it is highly improbable that when the land of an individual is abutting the passage, then why he would pass through the land of any other individual when he can easily have an assess to his land from the passage. The complainant has deposed in clear terms that the Investigating Officer did not verify from any respectable qua the occurrence having been taken place i.e. neither from any member panchayat, nor sarpanch. The Investigating

Officer while appearing as PW-3 ASI Pippal Singh, has also stated on the similar lines as to his having not verified from any respectable qua the occurrence having taken place as stated by the complainant. The Investigating Officer has deposed that he had gone to the village on dated 14.2.2013, though the occurrence took place on 8.2.2013. He could not say as to why the delay has occurred in lodging of the FIR ?. As per the complainant, he and Manpreet Singh (PW-2) had gone to the house of Ravinder Singh, as the electric connection was to be got transferred in the land purchased from Ravinder Singh, but, as per the complainant, neither Ravinder Singh, nor the other persons who were present in the said house, had come outside when the occurrence took place. The said fact rather stands nullified from the testimony of DW-1 Ravinder Singh, who has categorically stated that the complainant and Manpreet Singh have come to his house, but no occurrence took place as alleged by the complainant. In actual, there is a dispute of passage of agricultural land between the parties, due to which the complainant party was rather pressurizing the accused, and it got registered the case.

20. It is apposite to make mention that with regard to the taking away the purse and the mobile phone, the eye witness Manpreet Singh who has been examined as PW-2, could not tell the colour of the purse, nor he could tell as to who had snatched the purse. No bill or any document qua the ownership of the mobile phone has been established on the file, as to said mobile phone being that the complainant, which as per him has allegedly snatched. Thus, taking into note the totality of the facts, it is worth making mention that the delay is fatal in the present case, as no justifiable reason has been put forth qua the long delay of six days. The witnesses examined by the prosecution are also discrepant on the material particulars. Rather, the testimony of DW-1 Ravinder Singh at whose house the complainant, Manpreet Singh (eye witness) were present, strengthens the fact as to occurrence having not been taken place. It was the complainant who was adopting pressurizing the tactics, as there was a dispute regarding passage to the agricultural

land of the complainant, and the accused.

21. In the light of above discussion, the court finds merit in the submissions put forth by learned counsel for the appellants/accused. Hence, all the three points of determination are decided against the prosecution, and in favour of the appellants/accused.”

5. Having heard heard counsel for the parties and after carefully going through records of the case this Court finds that the Appellate Court was well within its right and authority to re-appreciate the evidence on record. The Appellate Court has rightly held that unexplained delay in lodging the FIR is indeed fatal to the case of the prosecution. The only explanation put-forth by the complainant for the said delay is that efforts were being made for compromising the matter. But the complainant when appeared into the witness-box was specific to submit that till date of recording of his evidence there was no effort qua any compromise regarding the dispute either at police station or in Panchayat. The only independent witness that has come on record is Ravinder Singh DW1 who was explicit in stating that no occurrence took place on the said date. Testimony of DW1 Ravinder Singh gains significance in view of the fact that whole case of the prosecution is that the complainant and his accomplices had gone to the house of the Ravinder Singh and it was in front of house of Ravinder Singh that the occurrence took place. Thus, this Court does

not find any reason to interfere in the well reasoned judgment passed by the Appellate Court. Resultantly, the present revision petition is dismissed.

August 10, 2023
Dpr (PANKAJ JAIN)
JUDGE

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