

106 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-91-2022 (O&M)
Date of Decision: 06.09.2023

Nand Lal ...Appellant

vs.

Ram Sewak and Others ...Respondents

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

Present: Ms. Komal, Advocate for
Mr. Sandeep Arora, Advocate
for the applicant-appellant.

N.S.Shekhawat J.

CRM-11557-2022

1. The applicant/appellant has moved the instant application under Section 5 of Limitation Act for condonation of delay of 185 days in filing the present appeal.

2. For the reasons mentioned in the application, the minimal delay of 185 days in filing the present appeal is condoned.

Main case

1. The applicant/appellant has filed the present application under Section 378 (4) Cr.P.C with a prayer to grant leave to appeal against the impugned judgment dated 03.07.2019, passed by the Court of Judicial Magistrate Ist Class, Jalandhar, whereby the complaint filed by the applicant/appellant was ordered to be dismissed.

2. As per the applicant/complainant, he and his brothers were having ancestral property at village Puray Maffi, District Raibrali, Uttar Pradesh.

Rajpal, brother of the applicant was living in the said village and was taking care of the ancestral property of the applicant/complainant, whereas the applicant and his other two brothers were residing at Jalandhar and Ambala. Certain persons namely Mahavir, Binda Deen, Bhagwati, Hanuman and Jagdish residents of village Puray Maffi, District Raibrali, Uttar Pradesh had encroached upon the ancestral property of the applicant and his brothers and a suit was also filed at Raibrali Courts in this regard. The said persons tried to encroach upon property of the applicant and they were requested not to do so. Even the respondents attacked the sister-in-law and other family members of the applicant and an MLR was also conducted from District Hospital, Raibrali. Thereafter, an FIR No.24 dated 01.06.2014 was also registered at Police Station Gadaganj under Section 323/504 of IPC against the respondents. Even the respondents have got registered a case under SC and ST Act against the applicant falsely. On 14.09.2014 at about 10:00 AM all the respondents came to rented accommodation of the applicant and entered into the room of the applicant. Respondents No.1 to 3,9 and 10 were carrying sticks and they started abusing and threatening the applicant. When the landlady Bholi Devi objected to the same then they started abusing her also. Respondents No.1 to 5 and other persons gave beatings to her. The respondents also gave slaps to the wife and minor children. The landlady raised hue and cry due to which many persons gathered at the spot. Friends of the applicant namely Sunil son of Sant Ram and Raju son of Ram Lakhan also came at the spot and the respondents left the spot. The respondents while leaving the property of the applicant, broke the TV, CD etc. and other household articles. Even respondents took away one empty gas cylinder. The respondents threatened the applicant to eliminate him and his

family members in case they visited Village Puray Maffi, PO Puraoli Budhkar, Tehsil Dalmao, P.S Gadagan, District Raibrali, UP. The whole incident was informed to the police but no action was taken.

3. Learned counsel for the applicant submitted that there was sufficient evidence against the respondents and the complaint filed by the applicant was wrongly dismissed. He further contended that the whole incident was witnessed by CW-1 Sunil, CW-2 Raju and CW-3 Bholi Devi and all the three witnesses had proved the case of the prosecution. However, the Trial Court committed grave error in brushing aside the testimonies of these witnesses by simply observing that they were interested witnesses and known to the applicant personally. In fact, this was no ground to reject the testimonies of said witnesses. Learned counsel further contended that respondents No.1 to 10 had come to the house of the applicant and duly armed with sticks and also abused and threatened the applicant, before causing injuries to him. He, thus prayed that impugned judgment may be ordered to be set aside.

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

5. The main allegation levelled by the applicant against the respondents/accused is that on 14.09.2014, the accused had entered into his house and started abusing. He was threatened by the accused and the accused had caused damage to his personal property as well. From the record, it is apparent that the applicant had examined three witnesses and had placed reliance on the documents Ex.C-1 to C-4. As per the applicant, he was caused injuries by several persons, however, he did not suffer even a bruise. Even respondents No.10 had attacked him brutally and caused him injuries with the

help of sticks. However, no MLR, treatment record or any other medical evidence was produced by the applicant, which would prove on record that anyone had suffered injuries in the said fight. The respondents failed to prove on record any MLR or medical evidence in this regard nor any doctor was examined by the complainant/applicant. Even CW-1 Sunil, CW-2 Raju and CW-3 Bholi Devi were having close relations with the applicant/complainant and were bound to depose in favour of the applicant. However, their testimonies were rightly disbelieved by the Trial Court. Even otherwise, CW-3 Bholi Devi was a landlady and two other witnesses were sons-in-law of Bholi Devi as well as friends of the applicant. Thus, it has been rightly held that the entire case was based on inimical and interested witnesses and the Trial Court has recorded good and valid reasons, while holding that no offence is made out against the respondents.

6. 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."

7. In view of the above discussion and the law laid down by the Hon'ble Supreme Court, there is no material illegality, illegality or perversity in the impugned dated 03.07.2019, passed by the Court of Judicial Magistrate Ist Class, Jalandhar and the impugned judgment is ordered to be affirmed.
8. Sequally, there is no merit in the application filed by the present applicant/complainant and the same is ordered to be dismissed.
9. Pending applications, if any, are also disposed off, accordingly.

06.09.2023

hitesh

**(N.S.SHEKHAWAT)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No