

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

**CRR-3073-2017 (O&M)**

**Date of decision: 21.03.2023**

**Balbir Kaur**

**.....Petitioner**

**versus**

**Kuldip Singh and others**

**.....Respondents**

**CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

**\*\*\***

Present :- Mr. N.K. Suneja, Advocate  
for the petitioner.

**\*\*\***

**RAJESH BHARDWAJ, J.**

**CRM-27602-2017**

Prayer in the application is for condoning the delay of 456 days in filing the present revision petition.

It has been contended by counsel for the applicant/petitioner that there is delay of 456 days in filing the accompanying revision. He has submitted that the applicant/petitioner was never informed of the result of decision in her complaint case as she attended the Court of JMIC and was told by the trial Court itself that your counsel will inform you about the decision. He has submitted that the delay occurred is totally *bona fide* and unintentional. He has further submitted that the revision is likely to succeed and applicant would suffer irreparable loss and injury if the delay is not condoned.

After hearing counsel for the petitioner and perusing the record, the Court is of the opinion that the delay occurred deserves to be condoned. Accordingly, delay of 456 days in filing the revision petition is condoned. Application is allowed.

CRR-3073-2017

Petitioner-complainant has approached this Court impugning the order dated 01.02.2016 wherein the respondents/accused were discharged by learned Judicial Magistrate Ist Class, Hoshiarpur finding no *prima facie* case having been made out against the respondents/accused.

As per the facts of the case, complainant has filed the present complaint under Sections 452, 380, 427, 447, 506 Part-II, 120-B of IPC. It was alleged in the complaint that the complainant is permanent resident of Village Sherpur Kham. All the accused were related to each other. It was contended that at the time of construction of her house, she and other family members had constructed the wall adjoining to the house of respondents/accused No.1 to 6 in her own land but the respondents/accused being head strong harassed the complainant on one pretext or the other. The complainant was residing alone in her house as her son and family members are residing in Phagwara. The complainant came to know about the illegal construction on the wall of her house and hence, she requested the respondents/accused to remove the same but they refused to hear her. She brought to the notice of Gram Panchayat as well regarding the illegal construction being carried out by the respondents/accused but was provided no help. Thereafter, she filed the complaint to the SHO, Police Station Haryana and both the parties were called in the police station on 05.10.2009 but in the intervening night of 02/03.10.2009, accused party had hatched the conspiracy against the complainant when her daughter-in-law namely, Baljit Kaur was also present with her. Respondents/accused were seen breaking the articles lying in the courtyard of her house. They started throwing small pieces of bricks towards the complainant with

intention to cause her injuries. When the complainant tried to enter her room, the respondents/accused pushed the door forcibly and she fell down. They forcibly entered her house and dragged her outside the room. They caught hold of her and restrained her from entering the room. Thereafter, when she entered her room, she found her old silver panjeban and an amount of Rs.960/- having been stolen. Her TV lying in the room was broken and the wall clock was also found to be stolen.

Learned counsel for the petitioner submits that the trial Court has illegally discharged the respondents/accused without appreciating the evidence on record and the law settled. He submits that the complainant led her preliminary evidence wherein Baljeet Kaur appeared as CW-1, complainant Balbir Kaur as CW-2, Amit Kumar as CW-3, HC Tarsem Singh as CW-4 and closed the preliminary evidence. All the respondent/accused were ordered to be summoned to face the trial by the Court for offence under Sections 380, 447, 120-B of IPC. He submits that all the witnesses examined in preliminary evidence had duly proved the case filed by the complainant but learned trial Court failed to appreciate the same and thus, illegally discharged the respondents-accused. He submits that there were specific allegations of trespassing and attacking the complainant and her daughter-in-law who was present with her. The articles lying in the house of complainant were stolen which were duly proved by the evidence produced. However, learned trial Court failed to appreciate the same and thus, has illegally discharged the respondent-accused and hence, the impugned order deserves to be *set aside*.

Heard the counsel for the petitioner and perused the record.

The Hon'ble Supreme Court in *State through Deputy*

**Superintendent of Police Vs. R. Soundirarasu etc, 2022 LiveLaw (SC)**

**741** has held as under:-

*55. The nature of evaluation to be made by the court at the stage of framing of charge came up for consideration of this Court in **Onkar Nath Mishra and others v. State (NCT of Delhi) and another, (2008) 2 SCC 561**, and referring to its earlier decisions in the **State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659**, and the **State of M.P. v. Mohanlal Soni, (2000) 6 SCC 338**, it was held that at that stage, the Court has to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged and it is not expected to go deep into the probative value of the materials on record. The relevant observations made in the judgment are as follows:-*

*11. It is trite that at the stage of framing of charge the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. ”*

56 to 67 xxxxxxxx

*68. Section 239 has to be read along with section 240 of the CrPC, 1973. If the Magistrate finds that there is prima facie evidence or the material against the accused in support of the charge (allegations), he may frame charge in accordance with section 240 of the CrPC, 1973. But if he finds that the charge (the allegations or imputations) made against the accused does not make out a prima facie case and does not furnish basis for framing charge, it will be a case of charge being groundless, so he has no option but to discharge the accused.*

After hearing counsel for the petitioner and perusing the record, it is apparent that the complainant filed the complaint on the basis of allegations regarding trespassing and thereafter, stealing the articles from her house. However, on the appreciation of the evidence, it is found

that the complainant did not lead any evidence to show a *prima facie* case regarding the ownership of the alleged articles having been stolen from her home. It was admitted during the evidence that the boxes were locked and keys were with the complainant. However, it was not the case of the complainant that locks were broken by the respondents-accused and thus, there was no evidence to prove the *prima facie* case against the respondents-accused. Besides this, the contentions raised by counsel for the petitioner that the matter was reported to the Panchayat but no member from the Panchayat was examined as a witness to prove the same. Besides this, it was contended that the daughter-in-law of the complainant was present at the time of occurrence and thus, she was witness to the occurrence. However, she was never cited as a witness. It was also alleged that her daughter-in-law suffered injuries in the attack opened by the respondents-accused but there was no medical evidence produced in support of the same. Thus, the trial Court came to the conclusion that no *prima facie* case is made out on the basis of the evidence led by the complainant.

Accordingly, relying upon the judgment State through Deputy Superintendent of Police case (supra), this Court finds no infirmity in the impugned order passed by the trial Court. Resultantly, the petition being devoid of any merits is hereby dismissed.

21.03.2023  
m. sharma

( RAJESH BHARDWAJ )  
JUDGE

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