

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

**CRM-A-269-MA-2017 (O&M)**

**Date of decision : 17.05.2023**

**Dharam Pal**

**.....Petitioner**

**versus**

**Parkash Kaur and another**

**..... Respondents**

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

**\*\*\***

Present :- Mr. Balkaran Singh, Advocate  
for the applicant.

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**RAJESH BHARDWAJ, J.**

**CRM-5093-2017**

Prayer in the application is for condoning the delay of 84 days in filing the present application.

It has been contended by counsel for the applicant that there is delay of 84 days in filing the accompanying application. He has submitted that the case could not be filed within time as the applicant had gone abroad and has come back in the month of January, 2017 and thus, in the process there occurred a delay of 84 days in filing the application. He has submitted that the delay occurred is totally *bona fide* and unintentional. He has further submitted applicant would suffer irreparable loss and injury if the delay is not condoned.

After hearing counsel for the applicant and perusing the record, the Court is of the opinion that the delay occurred deserves to be condoned. Accordingly, delay of 84 days in filing the application is condoned. Application is allowed.

CRM-A-269-MA-2017

Applicant has filed this application praying for granting leave to appeal against the impugned order/judgment dated 13.09.2016 vide which the trial Court has acquitted the respondents-accused.

As per the facts of the case, the applicant/complainant has filed a complaint under Sections 379, 447, 511, 34, 506 of IPC against three accused namely, Parkash Kaur, Bhupinder Singh and Gulshan Kumar. It was alleged that he was the owner in possession of the land measuring 6 kanal 5 marlas bearing Khasra no.41 and 177/42 situated in Village Kirpalpur. Accused Parkash Kaur filed various civil suits for claiming ownership of the plot owned by the complainant and she tried to interfere with the peaceful possession of the applicant/complainant but could not succeed. The respondents/accused namely, Bhupinder Singh and Gulshan Kumar were her close relatives and hence when the applicant/complainant went to his plot on 01.12.2007 at 10:00 AM, he found that 'chara crop' sown by him in his land bearing Khasra No.41 and 177/42 had been illegal removed by accused Parkash Kaur, Bhupinder Singh and Gulshan Kumar. It was contended that they criminally trespassed in his property and committed theft as well. On the basis of these allegations, he lodged the FIR No.293 dated 02.12.2007, under Sections 447, 511, 34 of IPC at Police Station Sadar, Phagwara but the police being under the influence of respondents-accused filed cancellation in the FIR and hence, the applicant/complainant filed the complaint. During the preliminary evidence, the applicant/complainant examined three witnesses and thus, the trial Court summoned the accused and on summoning, out of three accused, only two appeared namely Parkash Kaur and Bhupinder Singh. So far as third Gulshan Kumar is concerned, he did

not appear and was declared as proclaimed offender vide order dated 28.08.2015.

After closing of the post-charge evidence, statement of the accused persons were recorded under Section 313 Cr.P.C. wherein they denied the case of the prosecution. On conclusion of the evidence of both the parties, learned trial Court heard the arguments from both the sides and finally came to the conclusion that the complainant failed in proving its case beyond reasonable doubt and thus, acquitted the respondents-accused from the charges framed against them. Hence, they were acquitted by the trial Court vide impugned order dated 13.09.2016. Aggrieved by the same, the applicant has filed the present leave to appeal.

Learned counsel for the applicant/complainant has vehemently contended that learned trial Court has miserably failed to appreciate the evidence produced on record. He has submitted that the applicant was in exclusive possession of the land measuring 6 kanal 5 marlas however, Parkash Kaur accused claimed herself to be the owner of the plot bearing Khasra No.130/29 and 126/27 and in the garb of the ownership of Khasra No.130/29 and 126/27, she filed various civil suits but they were dismissed. He further argued that accused Bhupinder Singh was running Flour Mill near the plot of the applicant/complainant though the respondents-accused had no right or interest in the above-stated plot owned and possessed by the applicant. He submits that the applicant/complainant examined himself as CW-1, Roshan Lal as CW-2 and HC Parminder Singh as CW-3 who duly proved the case of the applicant. However, learned trial Court has failed to appreciate the evidence led by the applicant/complainant and thus, has wrongly disbelieved the evidence produced by the complainant. He submits that the

conclusion drawn by learned Appellate Court being unsustainable in the eyes of law, acquittal deserves to be *set aside* and respondents-accused be convicted for the charges framed against them.

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

After hearing counsel for the applicant and perusing the record, it is evident that on the basis of the allegations, the applicant/complainant earlier lodged FIR No.293 dated 02.12.2007, under Sections 447, 511, 34 of IPC at Police Station Sadar, Phagwara, however, after the investigation, the same was not substantiated and thus, the investigating agency filed the cancellation in the same. There is nothing on record to show that the applicant/complainant had filed any protest petition against the same and thus, cancellation filed had become final. In the complaint filed the complainant has produced the evidence as pre-charge evidence and thereafter, as post-charge evidence, the complainant appeared as CW-1, Roshan Lal as CW-2 and HC Parminder Singh as CW-3. Perusal of the statements recorded before the trial Court would show that during cross-examination the complainant did not produce aks-shijra of the property in dispute. During the cross-examination, he showed ignorance regarding the existence of revenue record showing him as exclusive owner in possession of the said khasra numbers. In his post-charge cross-examination, he admitted that kalandra under Section 182 IPC was filed against him by the police for filing false application against the respondent-accused Parkash Kaur. In his post-charge cross-examination, complainant-CW-1 stated that CW-2 Roshan Lal was present at the place of occurrence prior to his reaching there, whereas, CW-2 Roshan Lal in his cross-examination deposed that the accused had not cut the 'chara crop' in his presence. It was also deposed by CW-1 in his cross-

examination that he has not demarcated Khasra No.41, 177/42. Thus, it has been found that the complainant and his witnesses did not stand the test of cross-examination before the trial Court. As per settled principle of law, the prosecution is to stand on its own legs and the onus lies on it to prove the case beyond reasonable doubt but the evidence produced by the prosecution is contradictory. The trial Court had found that the complainant could not prove its case beyond reasonable doubt and thus, drawn the conclusion of dismissing the complaint.

As per law settled, the appeal against conviction and that against acquittal rests entirely on different pedestal. In case of acquittal, it has been held by Hon'ble Supreme Court repeatedly that if two views are possible in a given case, then, the one favouring the accused should be adopted. As per criminal jurisprudence, every accused is presumed to be innocent until proven guilty. As per law settled by Hon'ble Supreme Court, once the accused is acquitted by the Court of law, there lies double presumption of innocence in his favour. Hence, an Appellate Court should not disturb in a cavalier manner the findings arrived at by the trial Court resulting in acquittal of accused and it is only in case of perversity of the findings, the Appellate Court should interfere in the acquittal order passed by the trial Court. In **Jafarudheen and others vs State of Kerala 2022 SCC Online SC 495**, it is held that Appellate Court has to be relatively slow in reversing order of trial Court rendering acquittal, relevant para of the same reads thus:-

*“25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.P.C., the appellate Court has to consider whether the trial Court's view can be termed as a possible one, particularly when evidence on*

*record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”*

In the overall facts and circumstances of the present case on the anvil of law settled, this Court finds no perversity in the order passed by the trial Court. Resultantly, the present application for grant of leave to appeal is dismissed.

( **RAJESH BHARDWAJ** )  
**JUDGE**

**17.05.2023**  
*m. sharma*

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No