

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

**CRM-A-2736-2019 (O&M)
Date of decision : 27.02.2023**

Anita

.....Applicant

versus

Ram Lakhan and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Munfaid Khan, Advocate
for the applicant.

RAJESH BHARDWAJ, J.

CRM-36878-2019

Prayer in the present application is for condonation of delay of 44 days in filing the present appeal.

It has been contended by counsel for the applicant that after dismissal of the complaint by learned trial Court vide order dated 08.08.2019, the applicant filed an appeal in the Court of Hon'ble Sessions Judge, Faridabad. However, after filing of the same, it was informed by her counsel that the appeal against the acquittal is not maintainable before the Court of Sessions Judge and the same would be presented before the Hon'ble High Court. Hence, the appeal filed before Sessions Court was withdrawn on 10.09.2019 and thereafter, the present leave to appeal was filed before this Court and in that process, there occurred a delay of 44 days which is totally unintentional and *bona fide* and the 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 in filing the present application deserves to be condoned. Accordingly, delay of 44

days in filing the appeal is condoned.

Application is allowed.

CRM-A-2736-2019

This application has been filed under Section 378(4) Cr.P.C. by the applicant for grant of leave to appeal against the impugned order dated 08.08.2019 whereby learned Judicial Magistrate Ist Class, Faridabad has acquitted the respondents-accused from the charges for which they were prosecuted.

It has been contended by counsel for the applicant that the applicant before this Court is the complainant who filed a complaint under Sections 323, 452, 506, 354, 34 of Indian Penal Code. It was alleged in the complaint that the applicant/complainant was beaten by the accused about 03 years ago and she made a complaint to the concerned police station where which the respondent-accused appeared and confessed their guilt. Keeping this jealous in mind, the respondents-accused assaulted her on 20.12.2013 at about 08:30 PM by entering her house with common intention. The accused persons were armed with lathi and rods and she was beaten by giving the blows by the respondent-accused with their respective weapons. The complainant approached the police station with a request to register the FIR. However, as the police did not take any action, she filed the complaint. In pre-charge evidence, the applicant examined herself as CW-1, Savita as CW-2, Payal as CW-3 and Dr. Ajay Pal as CW-4 and the respondents-accused were chargesheeted thereafter. In the post-charge evidence, the applicant/complainant produced same evidence. In the statement of the accused recorded under Section 313 Cr.P.C., they pleaded their false

implication.

It is submitted by counsel for the applicant that the complainant proved her case by leading cogent evidence which was duly corroborated. After having been beaten up, the complainant was medically examined. She approached the police for taking legal action but no FIR was registered by the police and she was compelled to file the complaint. He submits that learned trial Court totally misread the evidence on record and thus, acquitted the accused persons on the basis of conjectures and surmises. He submits that the defence did not produce any evidence and thus, the evidence produced by the applicant/complainant was unimpeachable which learned trial Court has failed to appreciate. He has submitted that findings of the trial Court are totally perverse and thus, deserves to be *set aside*.

Heard. After hearing counsel for the applicant and perusing the record, it is clear that learned trial Court has appreciated the evidence led by both the sides. It is found when the complainant while appearing as CW-1 in her pre-charge evidence and while appearing as prosecution witness in post-charge evidence made major improvements in her deposition. The version of the complainant as narrated at the stage of pre-charge evidence was found to be full of contradictions as compared to the version made in the complaint. The occurrence has taken place in the public view and as deposed by her, she went to the police post but as her request was not heard, she filed the complaint before the Court on 14.09.2014. In her cross-examination, she stated that she did not know the name of those two boys who rescued her. However, in the complaint, she deposed that it was her sister and daughter who rescued her from the

clutches of accused persons whereas in the Court, she mentioned that two unknown boys rescued her. Thus, there were material improvements made by the complainant in her depositions in the complaint as compared to her deposition made in the pre-charge evidence. Similarly, there was material contradictions made by CW-2 Savita who is sister of the complainant. On appreciation of the evidence, it was found that the complainant stated that only 5-6 people attacked but CW-2 stated that it was a group of 50-60 people who attacked the complainant. Even otherwise, the evidence of CW-2 Savita who is an interested witness suffers from major contradictions. On appreciation of the MLR of the complainant and the evidence of CW-4 Dr.Ajay, it was found that the applicant was medically examined at 08:00 PM whereas, CW-2 eye-witness deposed in her cross-examination that incident continued upto 10-11:00 PM at night. Thus, the alleged occurrence is also full of doubts. The injuries are also not medically corroborated with the weapon alleged by the complainant. The motive is also not proved. Thus, in the overall facts and circumstances of the case, the view taken by learned trial Court in giving the benefit of doubt to the accused in the opinion of this Court suffers from no infirmity.

As per the 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 there are two views possible in a given case, then, the one favouring the accused should be adopted. As per the criminal jurisprudence, every accused is presumed to be innocent until proven guilty. As per the 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.”

Weighing the 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

27.02.2023
m. sharma

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