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

**CRM-39760-2019 in/and
CRR-3414-2019 (O&M)
Date of decision: 05.07.2023**

Narinder Singh

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Kavinder S. Chhibber, Advocate
for Mr. Ashish Aggarwal, Advocate
for the petitioner.

Mr. Amit Shukla, A.A.G, Punjab.

PANKAJ JAIN, J. (ORAL)

CRM-39760-2019

This is the revision at the behest of the complainant where there is a delay of 33 days in filing the revision petition.

From the averments made in the application seeking condonation of delay, this Court is satisfied that the petitioner has made a sufficient ground for condoning the delay.

Application stands allowed. Delay of 33 days in filing the revision petition is condoned.

CRR-3414-2019

Complainant is in revision against the judgment dated 01.08.2019 passed by Ld. Additional Sessions Judge, Tarn Taran affirming the judgment of acquittal of respondent No.2 passed by Ld. Trial Court

dated 09.02.2017 in FIR No.80 dated 31.05.2011 registered under Sections 420, 467, 468, 417 and 120-B IPC at Police Station Sadar Tarn Taran. .

2. Complainant alleged forgery of two Wills dated 20.03.1987 alleged to have been executed and registered in favour of respondents. Wills are alleged to have been executed by one Sewa Singh and Kehar Singh who died on 12.01.1992 and 12.10.1988 respectively. It was also claimed that both Sewa Singh and Kehar Singh lived upto the year 1998 and in fact their death certificates were also forged. Ld. Trial Court after analysing the facts brought on record found that forgery of Wills could not be proved as the original Wills never saw light of the day. There was no allegation as to how the Wills were alleged to be forged and fabricated. Even the originals of the death certificates claimed to be forged and fabricated were never brought in evidence. It has also come in defence evidence that in the judgment and decree dated 27.08.2012 passed by Ld. Civil Judge (Sr. Division), Tarn Taran (Ex.D1), the Wills have been proved before the Ld. Civil Court.

3. The said findings stand affirmed by the Ld. Appellate Court holding as under:-

“xxxx xxxx xxxx xxxx

14. Perusal of entire evidence reveals that the prosecution story is revolving around the alleged forgery of two Wills dated 20.3.1987. Original Wills have not come in evidence. There is no allegation or evidence to show how the Wills are forged and fabricated one. No evidence has been collected by the investigation to prove the alleged forgery and fakeness of the death certificates of Kehar Singh and Sewa Singh. Prosecution has not examined any attesting witness of the alleged Will. However, it has come in evidence that all the witnesses of the

Wills have died. So, in these circumstances, the procedure provided under law i.e the kins of those witnesses could have been examined as witnesses to prove the execution of those Wills. The statement of complainant Narinder Singh and PW2 Balbir Singh have no significance for the case of the prosecution to prove the charges. The documents allegedly forged and fabricated have not come in evidence. So, the allegations of forgery and fabrication do not stand in the absence of such documents. There is no evidence on behalf of prosecution regarding the death certificates of Kehar Singh and Sewa Singh. The affidavits in which allegedly false date of death of Kehar Singh and Sewa Singh has been mentioned, have not been proved in evidence. The accused have proved certified copy of judgment passed by the Civil Court in the case titled as Balbir Singh versus Nirvail Singh etc. Ex.D1 in which it is categorically held that the Wills dated 24.3.1987 executed by Kehar Singh and Sewa Singh in favour of Gurdeep Singh and Nirvail Singh are proved on record. Meaning thereby the validity and genuineness of the Wills has been up held by the civil court whereas in the present case prosecution has failed to bring any evidence to prove the alleged forgery and fabrication qua the Wills in dispute. Prosecution has miserably failed to prove the charges against the accused. It is well settled principle of criminal law that prosecution is under legal obligation to prove its case beyond reasonable shadow of doubt. It is not the accused who has to prove his innocence. Rather there is a rule of presumption of innocence in favour of the accused. The accused is presumed to be innocent unless, it is rebutted by the prosecution by producing consistent evidence without reasonable shadow of doubt. The prosecution is even under obligation to explain if there is delay in lodging the FIR against the accused. In the present case there is unexplained

inordinate delay in registration of the case which is also fatal for the case of prosecution.

xxxx xxxx xxxx xxxx”

4. After hearing counsel for the petitioner, this Court finds that there is no legal infirmity in the judgment of acquittal passed by Ld. Trial Court and affirmed by Ld. Appellate Court.

5. Revisional jurisdiction under Section 401 Cr.P.C. is limited and as per settled law unless any error of law on the part of Ld. Trial Court is pointed out, the same cannot be pressed seeking re-appreciation of evidence. Reference can be made to the judgment of Supreme Court in the matter of *Thankappan Nadar and others vs. Gopala Krishnan and another, 2002(9) SCC 393*. As per settled law the revisional jurisdiction can be exercised by the High Court in the cases of legal infirmities and as per the series of the precedents some of the illustrative categories are:

- i) where the Trial Court has wrongly shut out evidence which the party wish to produce.
- ii) where the admissible evidence brought on record by the defence has been wrongly brushed aside as inadmissible.
- iii) where the trial court had no jurisdiction to try the case and yet the accused stands convicted.
- iv) where the material evidence has been overlooked either by the Trial Court or the Appellate Court or the order has been passed by considering irrelevant evidence.
- v) where the conviction is based upon a view which is impossible and improbable.

6. Exercise of revisional jurisdiction under Section 401 Cr.P.C. is much narrow as compared to appellate jurisdiction.

7. Ld. Counsel for the petitioner has not been able to point out any circumstance which would warrant exercise of revisional jurisdiction in the findings recorded by the Courts below.
8. In the absence of any jurisdictional or legal error committed by the Courts below, this Court does not find any reason to exercise revisional jurisdiction to reappraise the evidence which is beyond the scope. Consequently, the findings recorded by the Courts below *qua* acquittal of respondent No.2 are affirmed.
9. Revision petition is dismissed.
10. Pending application(s), if any, shall also stand disposed of.

(PANKAJ JAIN)
JUDGE

July 05, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No