

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

SR. No.111

CRM-A-1754-MA-2018 (O&M)

Date of decision:21.09.2023

Kashinath Bansal

...Applicant

Versus

Devraj Bhateja @ Pappi and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. D.S. Matya, Advocate,
for the applicant.

N.S. SHEKHAWAT, J.

CRM-29331-2018

The applicant-complainant has filed the present application for condonation of delay of 125 days in filing the appeal.

Learned counsel for the applicant-appellant submits that initially the appellant had filed an appeal against the impugned order dated 05.02.2018 passed by the Sub Divisional Judicial Magistrate, Sohna, Gurugram before the court of Sessions Judge, Gurugram. However, later on, he realised that the appeal against the impugned order was to be filed before this Court under Section 378(4) Cr.P.C. Consequently, applicant-appellant had withdrawn the appeal and filed the present appeal before this Court. In this process, delay of 125 days had occurred. He also submits that the delay in filing the present appeal is unintentional and bonafide.

Heard.

For the reasons mentioned in the application, which is supported by an affidavit, the same is allowed and the delay of 125 days in filing the present appeal is condoned.

CRM-29332-2018

For the reasons mentioned in the application, the same is allowed. Exemption sought is granted.

Main case

1. The applicant has filed the present application under Section 378 (4) Cr.P.C. with a prayer to file an appeal against the order dated 05.02.2018 passed by the Sub Divisional Judicial Magistrate, Sohna, Gurugram, whereby the respondents were acquitted of the charge framed against them.

2. In the present case the complaint was filed by Kashinath Bansal, who is resident of Ward No.14, Sohna, District Gurugram. As per the applicant/complainant, he was a shopkeeper. He had filed a contempt of court case titled as 'Kashinath versus Seema Bhateja' and it was pending before the court of Civil Judge, Gurugram. The court ordered police assistance and maintenance of status quo order dated 02.06.2011. On the said basis, SHO, Police Station Sohna, sent ASI Deepak, Rohtash, Subhash and HC Prahlad to the suit property on 08.04.2011. They had put complainant's lock on it and handed over the possession to him. Thereafter, the applicant/complainant had put two chairs, a table, a stool along with a wooden almirah in the shop. On 15.06.2011, the applicant came to know that the respondents/accused had broken the locks of his shop and had put their

moved an application to DCP, South on 22.06.2011, but no action was taken. Apart from that, at about 4.00 PM on 19.08.2011, the applicant/complainant was passing by the shop in question and he found it open. Even the accused were sitting in it and he asked about his articles, but they refused to return the said articles and threatened him with dire consequences. Even they asked the applicant to leave the place and thereafter continued sitting there. The applicant got certain photographs of the open shop also.

3. Learned counsel for the applicant submitted that as per the court order, the possession of the shop in question was handed over to the applicant and thereafter, the applicant had put articles namely two chairs, a table and a stool along with a wooden almirah in the said shop. On 15.06.2011, the said articles were removed by the respondents by breaking open of the locks of the shop and had put their locks on the shop and had also stolen the articles from there. Learned counsel further submitted that the trial Court failed to appreciate that there was a civil court order in favour of the applicant and against the wife of respondent No.1, namely, Seema Bhateja. However, the said fact was completely ignored by the trial Court and wrongly acquitted the respondents.

4. I have heard learned counsel for the applicant and perused the case file minutely.

5. As per the case of the applicant, certain articles were kept in the shop, which were stolen by the respondents. However, the applicant/complainant completely failed to lead any evidence to prove the offence against the respondents. There was no evidence to show that the

accused/respondents had committed the theft of the articles kept in the shop.

Rather the applicant had relied upon two photographs Ex.C1 and Ex.C2, which were taken by the applicant on 19.08.2011, i.e., after the breaking of the locks by the accused. However, from a perusal of the photographs Ex.C1 and Ex.C2 as well as the photograph Ex.PW4/B, it is apparent that the shop had several racks arranged in it and showed a salesman standing there. Even the shop was seen in a good running condition and large number of articles were kept there. Thus, the version of the applicant that the respondents/accused had taken away his articles from the shop on 19.08.2011, when he took photographs, seemed improbable and unbelievable. Admittedly, the photographs Ex.C1 and Ex.C2 had been taken after handing over the possession to the applicant. However the said photograph clearly demolished the prosecution case and it was apparent that the goods were still lying in the shop and no theft was committed.

6. From the above referred discussion, it is evident that there is no illegality or perversity in the impugned order and the same is liable to be upheld. Apart from that, the complainant/applicant has miserably failed to prove any factual or legal error in the assessment of evidence made by the trial Court, insofar as the acquittal of respondents/accused is concerned.

7. In view of the above, the impugned order dated 05.02.2018 passed by the Sub-Divisional Judicial Magistrate, Sohna, Gurugram, is ordered to be upheld and the present application is hereby dismissed, being devoid of any merits. Pending application(s), if any, shall also stand disposed of.

(N.S. SHEKHAWAT)
JUDGE

21.09.2023
mks

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO