

106 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-705-2020 (O&M)
Date of Decision:20.04.2024

Lekh Raj ...Appellant

Vs.

Subhash Chander and others ...Respondents

Coram : Hon’ble Mr. Justice N.S.Shekhawat

Present: Mr. Kamal Narula, Advocate
for the applicant-appellant.

N.S.Shekhawat J.

CRM-16059-2024

1. The present application has been filed under Section 482 Cr.P.C with a prayer to restore the main case i.e **CRM-A-705-2020 (O&M)**, which was dismissed for non-prosecution vide order dated 01.04.2024.
2. For the reasons mentioned in the application, the application is allowed and the main case is restored to its original number and status and the main case is taken up on Board today itself.

CRM-12886-2020

1. The applicant/appellant has moved the instant application under Section 5 of Limitation Act for condonation of delay of 13 days in filing the present appeal.
2. For the reasons mentioned in the application, the minimal delay of 13 days in filing the present appeal is condoned.

Main case

1. The applicant has filed the present application under Section 378

(4) Cr. P.C with a prayer to grant special leave to appeal against the impugned judgment dated 09.12.2019, passed by the Court of Judicial Magistrate Ist Class, Fazilka, whereby the respondents were ordered to be acquitted by the Trial Court.

2. As per the case of the prosecution, the applicant/petitioner had taken a shop measuring 16' x 32' on rent from Roranwali Mandi, Aminganj Company Limited vide the rent deed dated 14.12.2001 and the possession of the shop was handed over to the applicant/petitioner by the company on the same day. Since then, the applicant/petitioner was carrying on his business of pesticides and insecticides under the name and style of M/s Kisan Kheti Centre in the shop in dispute. He had never surrendered the possession of the shop to any person nor any ejectment order had passed against him by any competent authority. However, the respondents/accused illegally wanted to dispossess the applicant/petitioner from the shop in question. At about 06:00 PM on 04.04.2016, the respondents along with some musclemen came to the shop of the petitioner and started beating him and also committed theft of the important documents, furniture, fixtures and others goods from the shop in question, without the consent of the applicant/petitioner and also dispossessed him from the same. Subhash Chander, Manjit Singh, Jaswinder Singh and Chandi Ram had also witnessed the occurrence. They also requested the accused not to dispossess the applicant/petitioner, but they threatened to kill the complainant. The matter was reported by the applicant/petitioner to the police post Mandi Aminganj Roranwali, but no action was taken by the police. The applicant/petitioner also made a complaint to the Senior Superintendent of Police, Fazilka, but the police had colluded with the accused and chose not to

proceed against them.

3. During the course of trial, the applicant/petitioner appeared as CW-1 and reiterated the averments made in the complaint. He also examined five witnesses namely C.Gurpreet Kamboj as CW-2, Rajesh Bhardwaj Draftsman as CW-3, Subhash Chander eye-witness as CW-4, Anil Kumar, Document Writer as CW-5 and Jaswinder Singh, eye-witness as CW-6 and also exhibited the following documents:-

- . ***Ex.C1:Copy of rent deed***
- . ***Ex.C2:Signature of Lekh Raj***
- . ***Ex.C3: Signature of Lekh Raj on application 06.04.2016 moved to SSP Fazilka***
- . ***Ex.C4:Copy of application to SHO PS Arniwala***
- . ***Ex.C5 &C6: True copies of applications dated 29.01.2016 and 06.04.2016.***
- . ***Ex.C7:Site plan dated 25.03.2016***
- . ***Ex.C8: Copy of rent note***
- . ***Ex.C9: True attested copy of register of Anil Kumar***
- . ***Ex.CW6/A: Application 29.01.2016***
- . ***Ex.CW6/B: Application 06.04.2016***

4. After closure of the prosecution evidence, the statements of the respondents/accused were recorded under Section 313 Cr. P.C and the entire incriminating evidence was put to them. They had taken a defence that Dheeraj Kumar, respondent No.2/ accused had taken the shop on rent at Roranwali Mandi Aminganj, on 08.09.2015 from Mandi Aminganj Company Limited and the possession of the shop had been handed over to him. Moreover, the respondent No.2 had been paying the rent of the shop to the said company till date and no occurrence had taken place at the shop in question. The respondents also relied upon documents i.e ***Xerox copy of proceedings book mark DA, Xerox copy of agreement Mark DB, Xerox copy of security receipt Mark DC to Mark DK and site plan Mark DL.***

5. Learned counsel for applicant/petitioner submits that the main allegations against the respondents was that the appellant had taken the shop on rent on 14.12.2001 and even a rent deed was executed in this regard in favour of the applicant/petitioner. The possession of the shop was handed over to the applicant/petitioner on the same day and he had not been ejected till date. Learned counsel further contends that there was sufficient evidence to show that on 04.04.2016, the applicant/petitioner was in possession of the shop, the respondents had taken away the important documents, furniture, fixtures and various goods lying in the shop and had forcibly dispossessed the applicant/petitioner. When the police did not take any action on the grievances raised by the petitioner, the applicant/petitioner had no other option, but to file a criminal complaint against the respondents. The impugned judgment is based on mis-appreciation of evidence and is liable to be set aside by this Court.

6. In the present case, the main allegation levelled by the applicant/petitioner is that on the date of occurrence, i.e. on 04.04.2016, while he was in possession of the shop, the respondents No.1 to 7 had formed an unlawful assembly along with certain unknown musclemen. It has also been alleged that they had beaten up the applicant/petitioner and he was forcibly dispossessed from the shop in question. However, surprisingly, the applicant/petitioner i.e. victim did not even suffer even one bruise and the version of the complainant was highly unbelievable. Apart from that, on 06.04.2016, the applicant/petitioner had allegedly moved a complaint, Ex.C-3 to the SSP, Fazilka. The Trial Court has rightly observed that in the said application, there is no mention of any date or time of the occurrence. Even, from a perusal of the said complaint, it is apparent that while filing the present

complaint before the Court, the applicant/petitioner had considerably improved the version and several other particulars were mentioned for the first time in the complaint before the Court.

7. Apart from that, the applicant/petitioner alleged that on the date of occurrence i.e 04.04.2016, he was in possession of the shop in dispute and was dispossessed by the respondents. However, the Trial Court had rightly held that as per the rent deed, the applicant/petitioner had taken the shop for a period; 01.12.2001 to 31.10.2002 i.e for a period of 11 months only and the tenancy already stood terminated on 31.10.2002 itself. Thus, on the date of occurrence i.e. 04.04.2016, the applicant/petitioner was not in possession of the shop in question and he could not produce any documentary evidence in support of his case. Rather from the defence evidence, it was apparent that the shop in dispute was given on rent to respondent No.2 by the landlord company on 08.09.2015. Even, the defence was successful in proving the case that on the date of occurrence, the respondents/accused were already in possession of the shop in dispute and there was no question of trespassing in the shop and dispossessing the applicant/petitioner from the shop.

8. It has been held by the Hon'ble Supreme Court in the matter of **“Bhaskarrao and others Vs. State of Maharashtra”, 2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228** as follows:-

“14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in

Tota Singh and Anr. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974 -

"The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappraisal, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a reappraisal of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

15. In *Ramesh Babulal Doshi v. State of Gujarat, 1997(3) RCR (Criminal) 62 : 1996 CriLJ 2867*, this Court observed:

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

9. Still further in **Criminal Appeal No(s.) 410-411/2015 [Ravi Sharma Vs State (Government of N.C.T. of Delhi) and another]**, decided on **11.07.2022**, Hon'ble the Supreme Court has held as under:-

*"Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.') while deciding an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant portion of a recent judgment of this Court in **Jafarudheen and Others v. State of Kerala (2022 SCC Online SC 495)** as follows:*

"25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, 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.”

10. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant application for leave to appeal is bereft of merit and without any substance; thus, it must fail. No case for interference has been made out. Consequently, the impugned judgment dated 09.12.2019 passed by the Court of JMIC, Fazilka is ordered to be upheld.
11. Resultantly, with the above-said observations made, the application for special leave to appeal stands dismissed.
12. Pending application(s), if any,are also disposed off.
13. Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation for filing the appeal, in accordance with law.

20.04.2024

hitesh

(N.S.SHEKHAWAT)
JUDGE

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