



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

235

CRM-A-1899-MA-2018 (O&M)
DATE OF DECISION: 18.07.2024

KULWINDER RANA

.....APPELLANT/APPLICANT

Versus

BALWINDER AND ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. J.P. Dhull, Advocate
for the applicant/appellant.

Mr. Ajay Kumar, Advocate
for the respondents.

SANDEEP MOUDGIL, J. (ORAL)

CRM-31884-2018

This is an application under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay of 54 days in filing the accompanying application.

In view of the assertions made in the application, the same is allowed subject to all just exceptions. Delay of 54 days in filing the present accompanying application is condoned.

The application stands disposed of.

CRM-A-1899-MA-2018

1. By filing the present appeal, under Section 378(4) Cr.P.C. the appellant has assailed the judgment dated 17.01.2018, passed by Judicial Magistrate Ist Class, Kaithal, in complaint case under Section 323, 324, 325, 326, 506, 166, 167 read with Section 34 IPC, whereby the accused-respondent has been acquitted of the offence charged.

2. Brief facts of the case unfolds as under:-

The complainant, an agriculturist from Kalayat, Distt. Kaithal, has filed a complaint alleging a physical assault by Balwinder and Kavi Raj on January 12, 2014. The complainant and Balwinder have been in a civil dispute since 2013, and the complainant's uncle Rajinder filed a partition suit against them in 2012. On the day of the alleged assault, the complainant and his brother were working in their field when Balwinder and Kavi Raj approached them and asked if they would withdraw the civil case. A quarrel ensued, and the complainant's brother was injured. The complainant tried to intervene, but Kavi Raj and Balwinder attacked him with a danda and dranti, causing injuries to his arm and leg. The complainant and his brother escaped and went to the CHC Kalayat for medical attention, but the doctor was unavailable. They were later examined at GH Kaithal, where X-rays revealed fractures. Despite this, the police refused to file an FIR against the accused and instead falsely charged the complainant, his brother, and father, who were later bailed out by the court. When the complainant inquired about the arrest of the accused on February 15, 2014, the police refused to take any action.

3. Learned counsel for the applicant/appellant contends that the judgment passed by the trial Court suffers from grave illegality, perversity and

the same is based upon surmises and conjectures and as such the same is liable to be set aside. It is further contended that the trial Court gave the benefit of acquittal to the respondent-accused on the ground that there are certain discrepancies in the version of the complainant, which culminated into being the defence of accused probable and trustworthy. Such an erroneous finding deserves to be set aside as the trial Court has utterly failed to appreciate the well proven oral as well documentary evidence of the complainant.

4. He further avers that the trial Court has not appreciated the fact that the accused persons have inflicted danda blow on the left arm of the brother of the complainant and has ignored the X-ray and MLR report of the injured i.e. the brother of the complainant.

5. On the other hand, learned counsel for the respondents vehemently argues that in reality it is the complainant party/appellant who is the aggressor in the present dispute and in this regard an FIR already stands registered against the complainant party titled as “State versus Sahab”.

5. Heard learned counsel for the parties.

6. I have perused the impugned judgment carefully and have also meticulously gone into the findings recorded by the trial Court. Upon perusal of the same, I do not find any perversity or illegality therein. As the accused under Section 313 Cr.PC has denied the incriminating material against him and has pleaded not guilty. This Court cannot ignore certain discrepancies that have come forth while perusing the judgment, wherein in present case the complainant has levelled allegations on 12.01.2014 that he along with his brother namely Parmod was present in the fields when the accused/respondent came and inflicted injury upon them. However, to support this contention, they

have nowhere mentioned that at what time the alleged occurrence had taken place. On the other hand, accused has taken a defence that it was the complainant party who was the aggressor and inflicted injuries on the accused/respondent and in this regard, FIR already stands registered against the complainant party, therefore, this Court cannot loose sight of the fact that the present case has been filed as a counter-blast to the FIR registered by the accused.

Another point that needs consideration for adjudication of the present case is that there is a prior dispute regarding land between both the parties for which a civil suit is pending adjudication, therefore, there is every possibility that both the parties might have got involved themselves in a tiff. However, the complainant/appellant could not established beyond the shadow of reasonable doubt that the accused/respondents were the actual aggressors and complainant party acted in self defence, therefore, the trial Court has rightly acquitted the accused-respondents of the charges framed against them.

7. It is a settled law as held in **C. Antony v. K.G. Raghavan Nair, 2002(4) RCR(Criminal) 750** that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

8. On perusal of the judgment passed by the trial Court dated 17.01.2018, this Court is of the considered view that the said judgment is well reasoned and is based upon proper appreciation of evidence led by the parties.

The ground of acquittal, as has been culled out by the trial Court, cannot be said to be faulty, contrary to law or requiring any interference by this Court.

9. Accordingly, the leave to appeal stands dismissed.

18.07.2024

Poonam negi

(Sandeep Moudgil)
Judge

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No