

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**213****CRM-A-2237-MA-2016 (O&M)****Date of order: 26.02.2024****Mehrun Nisha****.....Applicant(s)****Vs.****Parvez Alam & Others****.....Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr.Pawan Malik, Advocate
for the applicant.

Nidhi Gupta, J.**CRM-40141-2016**

This is an application under Section 5 of The Limitation Act read with Section 482 Cr.P.C. for condonation of delay of 129 days in filing the present appeal.

After going through the contents of the application, which is supported by affidavit of the applicant, the same is allowed, subject to all just exceptions and delay of 129 days in filing the present appeal, is condoned.

MAIN CASE

Present application under Section 378(4) Cr.P.C. is filed for permission to grant special leave to file appeal against order of acquittal dated 01.03.2016 passed by learned Additional Chief Judicial Magistrate, Faridabad, whereby respondents No.1 to 3 herein have been acquitted in case bearing No.CHi/23733/2014 arising out of FIR No.400 dated

04.12.2010 under Sections 323, 452, 354, 506, 148 and 120-B IPC registered at Police Station Old Faridabad.

2. Learned counsel for the applicant inter alia submits that the learned trial Court was in patent error in acquitting the accused/respondents No.1 to 3 herein, vide the impugned judgment dated 01.03.2016 passed by learned Additional Chief Judicial Magistrate, Faridabad. It is submitted that respondent No.1 is the husband, respondent No.2 is the brother-in-law and respondent No.3 is the father-in-law of the applicant. It is stated that on 24.11.2010 at about 11:30 pm, accused/respondents No.1 to 3 along with 3-4 persons after making unlawful assembly and hatching a criminal conspiracy with each other and with a common intention, entered the house of the applicant/complainant. The parents of applicant/complainant were not present at the house and applicant/complainant and her sister-in-law Nitu Shah were present. However, the parents of the sister-in-law of the applicant/complainant had come to visit their daughter on the same day. It is submitted that accused/respondents No.1 to 3 had tried to outrage the modesty of the applicant/complainant and her sister-in-law and tore their clothes. When parents of Nitu Shah and tenants of applicant/complainant tried to stop the accused/respondents No.1 to 3, then they and their accomplices gave merciless beatings to them.

3. It is further submitted that the accused/respondents No.1 to 3 had no occasion or business to enter the house of the applicant/complainant at the late hour of 11:30 pm. Moreover, the incident has been duly admitted by the accused/respondents No.1 to 3 and

therefore, learned trial Court could not have acquitted them. It is further contended that the learned trial Court has disregarded the testimony of the eyewitnesses PW3 namely Shabana as also that of PW2 namely Neetu Shah and therefore, the impugned judgment be set aside. It is further submitted that findings of the learned trial Court as contained in Para 12 of the impugned judgment to the effect that the applicant/complainant had stated that upon her raising alarm, the tenants had reached the spot, is patently incorrect as the incident had occurred at about 11:30 pm and therefore, at this late hour, they could not have entered the house of the applicant/complainant.

4. No other argument is made on behalf of the applicant.

5. I have heard learned counsel for the applicant and perused the case file in detail. It may be noted that the present application is of the year 2016. However, notice has not yet been issued in the matter as the case has been repeatedly adjourned either at the request of the counsel for the applicant, or on account of the fact that there was no representation on behalf of the applicant.

6. Be that way, it is admitted that present FIR emanates from a matrimonial dispute between the parties. On 4.12.2010, the applicant/complainant filed complaint to the effect that on 24.11.2010 at about 11.30 p.m., accused/respondents No.1 to 3 along with 3-4 persons after making unlawful assembly and hatching a criminal conspiracy with each other and with a common intention entered the house of applicant/complainant. Her parents were not present at the house and applicant/complainant and her sister-in-law Nitu Shah were present.

However, the parents of the sister-in-law of the applicant/complainant had come to visit their daughter on the same day. The accused persons tried to outrage the modesty of applicant/complainant and her sister-in-law and tore away their clothes. When the parents of Nitu Shah and the tenants of applicant/complainant tried to stop the accused persons, they and their associates gave merciless beatings to them. Accused/respondents No.1 to 3 threatened the applicant/complainant to face dire consequences if she did not withdraw the execution application under section 128 Cr.P.C. from the Family Court. It was further alleged that accused persons are basically residents of Bihar where various criminal complaints had been filed against the father and brother of the applicant/complainant just to pressurize her parents to compromise with them and to withdraw the cases filed against accused/respondent No.1. Accordingly, action was sought against the accused persons. On the basis of the above said complaint dated 04.12.2010, FIR No.400 dated 04.12.2010 under Sections 323, 452, 354, 506, 148 and 120-B IPC was registered at Police Station Old Faridabad against the respondent-accused. Thereafter the accused faced trial, and have been acquitted vide the impugned judgment. Hence, present leave to appeal.

7. There are a few glaring lacunae in the present case which have not been satisfactorily explained by counsel for the applicant. Admittedly, the incident is of 24.11.2010, however, complaint (produced as Ex.PW1/A before the learned trial Court) has been filed by the applicant only on 04.12.2010. There is no explanation whatsoever forthcoming from the applicant regarding the delay of over 10 days in filing the FIR.

8. Furthermore, relevant findings of the learned trial Court are contained in Paras 12 and 13, which are reproduced hereinbelow:-

“12. After hearing rival submissions of both the counsels, first point comes before this court as to whether all the witnesses have deposed in conformity of the complaint ExPW1/A. It is clear that in the complaint Ex.PW1/A, the allegations are raised against the accused for outraging the modesty of complainant and torn off the clothes but PW2 while appearing in the witness box has deposed in totally contradicting way. She deposed that tenants reached at the spot on raising alarm. She also deposed that her parents had come to the house for knowing her well being. She further deposed that she was in habit of sitting outside the house and keys was always handed over by her to the tenant. She further deposed that she had not made telephonic call to the police party. She had not gone to the police station and her parents might have gone in the police station.

13. It is further clear that PW3 deposed that she has not witnessed the alleged incident. In the last line of her cross examination, she admitted of not visualizing the alleged incident. PW3 further deposed that she had no knowledge regarding any case pending against the accused. She also deposed that no stairs door was existed in the premises. She deposed that door was always open. No tenant reached at the spot for saving her from the cruel clutches of the accused. So, PW2 and PW3 have deposed in totally contradicting way. PW2 deposed that tenants reached at the spot whereas PW3 deposed that no tenants reached at the spot. Complainant in her complaint alleged torn off the clothes but there is no allegation of torn off the clothes while all the witnesses appeared in the witness box. PW3 has not visualized the alleged incident. No tenant has been examined by the

*prosecution. Moreover, there is no such complaint or case shown by the prosecution pending against the accused. Hence, the case of complainant is totally doubtful and same is not inspiring the confidence of the court and in this regard, I stand fortify with the case law titled as **L.L. Kale vs. State of Maharashtra 2000(0 RCR page no.299**, in which it has been observed by the Hon'ble Supreme Court of India that **the contradictions in the statements of Pws, when confronted with earlier statements of Pws, witness will be deemed wholly unreliable, no explanation for contradiction given. Accused is entitled to be acquitted.**"*

9. Cross-examination of the applicant/complainant as PW1 (Annexure A1), is also relevant and is reproduced hereinbelow:-

"....It is correct that Asgar Ali is my father-in-law and Parvej is my husband and Javed is my Devar(younger brother-in-law). It is correct that earlier also I had got registered a case U/s 498-A,406 IPC against the above accused persons. It is correct that the said case had been dismissed. Said again that I have effected compromise, but I do not have any document of the compromise nor I have copy of the said compromise. I do not remember If there had been any written compromise or not. It is incorrect that my case was dismissed. I have two children from the loin of Parvej Ali, one is girl aged 13 years and other is son aged 11 years. I had filed a complaint for receiving expenses and vide which the maintenance expenses for me and my children have been fixed. It is correct that now around one year has gone by since I had filed complaint for maintenance and the court had also sent my husband in jail for not providing me the maintenance expenses. On 24.11.2010 my mother, father and my brother were in Patna and were not present in the house. My parents and my brother had come after about 15 days. I did not submit any written complaint to the police

but I made oral complaint before the police. Myself my mother and father had gone to make the complaint because my mother and father slept there in the night. I had given this complaint in the - police station. I do not remember that after how many days the police had assured us to take action but the police said that they will soon take the action. Thereafter I never went to the police station. In this regard I did not submit any complaint to any D.S.P., S.P: or Commissioner. I did not get myself medically examined regarding my injures. No other member of my family got himself/herself medically examined regarding the beatings given to them. My house has four storey, and I live in 4" floor. My Bhabhi also lives in 4" floor and the tenants live in the rest of the three storey. My children live with me but on that day the children were sleeping and therefore they were not beaten. The children were sleeping in my room. The occurrence had taken place in my room. I had closed the door from inside but the accused persons knocked at the door. I did not enquire from inside the room as to who is knocking at the door. As soon as I opened the door, the accused person made their entry in the room and they gave me beating. They all gave me beating at the same time. I do not remember which accused had attributed which injury. At that time had worn a suit. The shirt which was torn in the quarrel is not present in the court. The police did not take the said shirt. Said again that it was shown to the police. I did not get recorded this fact in my complaint. The Lahes of my cloth was burned. When they came inside then I raised hue and cry saying Bachao-Bachao. It is correct that my Bhabhi had raised noise only after hearing my hue and cry. No body caught hold of the said 3/4 main persons which I had pointed out. It is correct that 7/8 persons had collectively entered my room. I had got this fact recorded in my complaint that 7/8 persons had entered my room. Said again that I got recorded that they had entered in my house and not in the room. It is correct that

for all the four floor of the building there is only one main gate/Jihna. There is no door to the Jhina and it remains open. It is correct that the doors of all the tenants remain closed. I do not know from where the 7/8 persons had come. Said again that they had come from downstairs. My no tenants had come for my rescue. Two of the tenants had seen them coming. I had got recorded all these facts in the complaint that the tenants had seen them coming. (Confronted with complaint Ex PW1/A where it is not so mentioned) The accused had not torn the shirt of my Bhabi. I do not know if the parents i.e. mother and father of my Bhabi had given any slap and fist blows to the accused persons. I do not know that for how long the accused stayed in my room. It is correct that the accused persons were not having any Lathi, stick, or weapon.....”.

10. From the above, it is clear that there are glaring discrepancies and contradictions in the case set up by the applicant. Learned counsel for the applicant is unable to controvert the above said findings of the learned trial Court. Nothing whatsoever has been produced before this Court to dispute the same.
11. In view of the above, I find no merit in the present application, and the same is accordingly, **dismissed**.
12. Pending application(s) if any also stand(s) disposed of.

26.02.2024
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No