

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

CRM-A-2110-MA-2017 (O&M)
Date of decision: 23.04.2024

State of Haryana

Versus

Dr. Sanjay Gupta and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Geeta Sharma, DAG Haryana

Mr. Ranvijay Singh, Advocate
for respondent no. 1

HARPREET SINGH BRAR, J.

CRM-30309-2017

The present application is filed under Section 5 of the Limitation Act, 1963, seeking condonation of delay of 191 days in filing of the present appeal. For the reasons mentioned in the application, the same is allowed and the delay of 191 days is condoned.

CRM-A-2110-MA-2017

1. The present application is preferred under Section 378(3) of the Cr.P.C. against the judgment of acquittal dated 28.11.2016 passed by learned Additional Sessions Judge-cum-Judge, Special Court, Kaithal, in the case stemming from FIR, bearing No. 10, dated 18.01.2014 under Sections 312, 315, 420, 120-B of IPC and Sections 3, 4 and 5 of Medical Termination of Pregnancy Act, 1971 registered at Police Station Civil Lines, Kaithal.

2. Briefly, the facts are that one Smt. Kiran (PW-3) met Dr. Aditya Swarup Gupta (PW-1), the then Civil Surgeon, Kaithal and informed him that Chhoto Dai, respondent No.2-accused took her to Dr. Sanjay Gupta, respondent No.1-accused, who charged Rs. 4000/- to terminate her pregnancy and was running a clinic not registered under the Medical Termination of Pregnancy Act, 1971. On finding this information to be reliable, a raiding team headed by Dr. Aditya, reached the disclosed place i.e. Amargarh Gamri, Kaithal, where they found a hospital running under the name of '*Sanjay Nursing Home*'. After 2-3 knocks a lady, namely, Kiran came out of the room. On checking the dustbin of the room, empty capsules and vials of injections were found. Respondent no.1-accused introduced himself as the owner of the clinic. On conducting a search of the entire premises, various instruments used for the termination of pregnancy were also recovered. Subsequently, all incriminating material used for carrying out illegal abortions were taken into possession vide memo Ex. PC on which respondent No.1-accused appended his signature. Respondent No.2-accused affixed her thumb impression. Thereafter, the entire raiding team went to SHO, where PW-1 moved an application Ex. PJ to SHO intimating him about the facts of the case and requesting for the initiation of appropriate criminal proceedings against the respondents-accused. On the basis of the said complaint, a formal case was registered.

3. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that no pregnancy test of the decoy customer Smt. Kiran (PW-3) was conducted to ascertain as to whether she was pregnant on the day of the alleged occurrence. Simply relying on the oral statement of Smt. Kiran that she was pregnant at the time does not

constitute proof. In the absence of this, there is nothing on record to show that the decoy customer, who eventually did not support the case of the prosecution while appearing in the witness box as PW-3, was pregnant on the day she visited Dr. Aditya Swarup Gupta. Moreover, when the raid was conducted, the decoy customer was fully clothed and had opened the door of one of the rooms of the clinic. As per the prosecution, the respondent no.1-accused had already administered an injection to Smt. Kiran for aborting the foetus, however, surprisingly no blood sample of the decoy customer was taken in order to prove this contention. Even the salt of the injection which was administered was not sent to the FSL, Madhuban, Karnal, Haryana. Hence, in the absence of any evidence led by the raiding party to substantiate the claim that the decoy customer was pregnant at the time she was sent to get her pregnancy terminated, the entire case of the prosecution crumbles.

4. Furthermore, it was the case of the prosecution that from the recovery of the medicines and other instruments from the premises of the respondent no.1-accused, which are used in the termination of pregnancy, a presumption can be drawn that the respondent no.1-accused kept all the medicines and other instruments for the purpose of conducting illegal abortions. In the absence of any cogent proof, mere assumption cannot be a sufficient reason to convict the respondents-accused. Lastly, the clinic was located in a densely populated area, however, no efforts were made the prosecution to join any independent witnesses.

5. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the

innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (See **H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415**). A Division bench of this Court in the judgment passed in **State of Haryana Vs. Ankit and others** passed CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

6. In view of the facts and circumstances of the case, this Court finds that learned State counsel has failed to point out any perversity or illegality in findings recorded by the learned trial Court which warrants interference by this Court. As such, there is no merit in the present application and hence, the leave to appeal is denied.

7. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

23.04.2024
Neha

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