

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

CRM-A-491-MA-2018 (O&M)
Date of decision: 16.01.2024

Balwinder Kaur Khalsa

....Applicant/Appellant

Versus

Pawan Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. R.S.Bains, Senior Advocate with
Mr. Amar Jeet, Advocate and
Mr. Anmoldeep Singh, Advocate
for the applicant-appellant.

HARPREET SINGH BRAR, J.

CRM-7247-2018

This is an application under Section 5 of the Limitation Act, 1961 seeking condonation of delay of 81 days in filing the accompanying application under Section 378 (4) of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.').

For the reasons mentioned in the application, the same is allowed and the delay is condoned.

CRM-A-491-MA-2016

1. The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment of acquittal dated 04.09.2017 passed by learned Judicial Magistrate Ist Class, Ferozepur in criminal complaint case CIS No.

COMI/200/2014 filed under Sections 452, 295-A, 509, 506, 510, 109, 148, 149 of the Indian Penal Code (hereinafter 'IPC').

2. Briefly, the facts are that on the intervening night of 14/15.09.2014, at about 12:00 AM, respondents no.1 to 3 were raising hue and cry in the street, under the influence of alcohol. The applicant tried to restrain them from doing so, then they used abusive language and threatened her of dire consequences. Thereafter, respondents 4 to 6 came on the spot and respondent no. 4-Sonia raised a lalkara. Respondent no. 1-Pawan, armed with *daang* along with other respondents-accused, who were also armed, forcibly entered the house of the applicant to cause injuries to her. However, Chhinder Kaur and Sukhdev Singh, husband of the complainant, came to the spot and rescued the applicant, while the respondents accused fled away along with their respective weapons.

3. Having heard the learned counsel for the applicant and after perusing the record of the case with his able assistance, it transpires that there are considerable lacunae in the prosecution case. According to the complainant, when the accused party entered her house, they were all armed. While it is mentioned that respondent no. 1 was armed with a *daang*, however, neither the applicant nor CW2- Surinder Kaur could tell what kind of weapons were the other respondents-accused wielding. The applicant has not examined Sunil, Rajiv or even her husband Sukhdev Singh who were stated to be present at the place of occurrence. Apart from the applicant herself, only Surinder Kaur (CW2) was examined who, on cross-examination, admitted that her husband is in civil litigation with respondents no. 5 and 6. Further, not even a single independent witness has been examined even though it is the case of the

applicant that the respondents-accused habitually created a ruckus in their street under the influence of alcohol.

4. Moreover, on investigation, the police prepared the enquiry report (Ex. DW3/B) which includes the joint statement of the neighbours of the applicant, concludes that only hot words were exchanged and there was no instance of the accused trespassing into the house of the applicant or insulting her.

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 counsel for the applicant-appellant 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

16.01.2024
Neha

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