

**CRM-A-569-MA-2018 (O&M)****-1-****214 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH****CRM-A-569-MA-2018 (O&M)****Date of Decision: 05.11.2024****BOBY****...Applicant****V/S****SANJAY AND OTHERS****...Respondents****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR****Present: Mr. Vikram Jeet Singh, Advocate
for the applicant.*************HARPREET SINGH BRAR J. (Oral)****CRM-8132-2018**

This is an application under Section 5 of the Limitation Act read with Section 482 of Cr.P.C. for condonation of delay of 49 days in filing the application seeking leave to appeal.

For the reasons mentioned in the application, same is allowed and delay of 49 days in filing the application seeking leave to appeal is condoned.

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1. The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment of acquittal dated 03.11.2017 passed by learned Sub Divisional Judicial Magistrate, Tosham, in complaint under Sections 323, 406, 498-A and 506 of Indian Penal Code.

2. Complaint(supra) was filed by the complainant-Smt. Bobby on the allegations that on 6.11.1996 her marriage was solemnized with accused no.1-Sanjay and out of their wedlock two sons and two daughters were born. It was further alleged that the accused used to beat her daily on account of bringing less dowry and used to threat her of

divorce. It has been stated that on 24.08.2012, at about 9.00 p.m. the

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accused persons in conspiracy of each other demanded dowry, but when complainant expressed her inability, the accused persons attacked her with jelly and bricks as well as gave fist and slap blows to her. On cries raised by the complainant, neighbours and mother of the complainant namely Smt. Panmeshwari Devi, who had come to meet the complainant, reached and rescued the complainant from their clutches. At that time the accused persons also threatened the complainant to kill her if they got an opportunity in future. Thereafter, the complainant got admitted herself in CHC Tosham for treatment where she remained admitted for about 2-3 days. It has been stated that the complainant approached the police station, Tosham to take legal action against the accused, but she was threatened by the police and did not take any action. Now the complainant is residing with her mother at Dadri gate Bhiwani and even then the accused are threatening the complainant to kill her if she takes any action against them. Hence the present complaint.

3. Having heard the learned counsel for the applicant and after perusing the record of the case with his able assistance, it transpires that learned Court below has opined that no specific date for demand of dowry has been mentioned in the complaint. Further the complainant has got examined her sister Smt. Munni but she has not deposed about the demand of dowry having been ever made by the accused persons from the complainant and no other independent witness was examined. It was further observed that as per the statement of the complainant, she has two sons and two daughters of the age of about 14-15 years at the time of filing of the complaint, who have then become major, but even they have not been

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examined by the complainant. Rather, complainant admitted that eldest daughter has already deposed in favour of accused No. 1-husband of the complainant, which creates doubt on the veracity of the complainant story. Further, no evidence was found available on record to corroborate the fact that accused persons have misappropriated the alleged *istri dhan*. Moreover, delay of almost 24 hours in medico legal examination of the victim also creates doubt on the complainant's story.

4. 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.

5. 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

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which warrants interference by this Court. As such, there is no merit in the present application and hence, the leave to appeal is denied.

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

(HARPREET SINGH BRAR)
JUDGE

05.11.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No