

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-1586-MA-2015
Date of Decision: 16.04.2024

State of Haryana

...Applicant

Versus

Rohit and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: - Mr. A.P.S. Deol, Senior Advocate
with Mr. Karan Kalia, Advocate
for the respondents

Ms. Geeta Sharma, DAG Haryana

Harpreet Singh Brar, J. (Oral)

CRM-30973-2016

The present application is filed under Section 5 of the Limitation Act, 1963, seeking condonation of delay of 44 days in filing the application under Section 378(3) Cr.P.C. For the reasons mentioned in the application, the same is allowed and the delay of 44 days in filing the said application is condoned.

CRM-A-1586-MA-2015

1. The present application is preferred under Section 378(3) of the Cr.P.C. against the judgment of acquittal dated 16.04.2015 passed by learned Additional Sessions Judge-cum-Judge, Special Court for Heinous Crime Against Women Hisar, in the case stemming from FIR, bearing no. 1408, dated 12.11.2013 under Sections 376, 506 and 511 of IPC and Sections 12 and 18 of

the Protection of Children from Sexual Offences Act, 2012 ('POCSO' for short).

2. Briefly, the facts are that on 16.05.2013 at around noon, the complainant had gone to the market, leaving her 4 year old daughter at home. When she returned at around 1:30 p.m., she found a motorcycle belonging to respondent no.1-accused, parked outside her house. When she entered the home, she found that respondent no.1-accused, who was in an inebriated condition, had stripped her daughter naked and was trying to put his fingers inside her vagina. He was also touching the cheeks of the victim. The complainant immediately turned him out of the house. Later in the evening, when the complainant tried to confront the mother of respondent no.1-accused i.e. respondent no.2-accused, she threatened to kill the complainant. Similarly, respondent no. 1-accused repeatedly frightened the complainant.

3. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that there was delay of 6 months in the registration of the FIR by the complainant. Delay in setting the law into motion by lodging of complaint and registration of FIR is normally viewed by the courts with suspicion as it undermines the integrity of the cause of action. Hence, it becomes imperative for the prosecution to satisfactorily and cogently explain the delay. In the case at hand, however, no such satisfactory explanation has been put forth by the complainant.

4. Furthermore, the complainant in her cross-examination has admitted that respondent no.1-accused used to visit her frequently and spend the night at her place. Although as per her deposition, he did so forcefully, however, it is surprising that no complaint was made to this effect for years. It is also important to mention here that the complainant had filed another

complainant alleging to be raped and videographed by respondent no.1-accused. In that case as well there was a delay of 2 years in the lodging of the FIR. The complainant in that case deposed that she used to call and send messages to respondent no. 1-accused. Additionally, both the mother and the sister of respondent no.1/accused knew the complainant and visited her on several occasions. As per the testimony of the complainant, she had once gone to Chatbir Zoo, Panchkula with her neighbours, where respondent no.1-accused allegedly showed up unannounced and started harassing her. However pictures from that day, put forth by the defence, which were denied by the complainant as being fake, were admitted by the victim to be genuine. Moreover, the complainant has admitted that respondent no.1-accused used to occasionally drop her daughter to school.

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.

16.04.2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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