

207

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-339-MA-2014 (O&M)
Date of Decision: 22.04.2024

Tara Chand

...Applicant

Versus

Babu Lal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: - Mr. Anshumaan Dalal, Advocate
for the applicant

Mr. Pankaj Maini, Advocate
for respondents No. 2 and 3

Mr. Vikas Bhardwaj, AAG Haryana

Harpreet Singh Brar, J. (Oral)

CRM-7513-2014

The present application is filed under Section 5 of the Limitation Act, 1963, seeking condonation of delay of 491 days in filing the application under Section 378(4) of Cr.P.C. For the reasons mentioned in the application, the same is allowed and the delay of 491 days in filing the aforesaid application is condoned.

CRM-A-339-MA-2014

1. The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment of acquittal dated 24.08.2012 passed by learned Judicial Magistrate 1st Class, Bhiwani, in a criminal complaint case, bearing no. 540 of 2009, filed under Sections 323, 354, 427, 447, 506 and 34 of the IPC.
2. Briefly, the facts as per the complaint are that the agricultural land comprised in Khasra no. 22//2 (8-0), 8/1 (1-10), 9/2/2 (5-16) situated in Village

Barsi District Bhiwani was owned by the son of the complainant. The son of complainant passed away in 2008 and since then the land was cultivated by his legal heirs. The respondents-accused are the relatives of the applicant and nursed a grudge against the applicant for possessing the said land. On 27.04.2009 at about 11:00 a.m., the applicant was ploughing the fields, when the respondents-accused armed with sticks allegedly accosted the applicant and threatened to kill him. Subsequently, respondent No.1 Babu Lal and respondent No.2 Ved Parkash gave a danda blow to one Pardeep while respondent No.3 Sohan Lal gave a danda blow to one Darshana. On the intervention of the applicant, respondents No. 2 and 3 tore the clothes of Darshana. On hearing the commotion, Nihal Singh and Leela came to rescue the applicant from the clutches of the respondents-accused. The respondents while fleeing threatened to kill the applicant. Thereafter, the complainant took Darshana to get medico-legally examined. The MLR was given in the police station but no action was taken by the police. Hence, the complaint before the Magistrate.

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 2 months in the filing of the complaint by the applicant. 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 applicant. Although a *ruqa* was sent to police station by Dr. Arvind Rana (PW4) and the statements of the injured were recorded, no reason has been supplied by the applicant as to why the applicant did not take any action against the respondents-accused in those 2 months. There is no

evidence to show that any application was moved before the S.H.O. or before the S.P. Bhiwani.

4. Furthermore, as per the complaint, Nihal Singh and Leela came to rescue the applicant from the clutches of the respondents-accused, however, the applicant failed to examine them as complainant witnesses and as a result there are no independent witnesses to corroborate the version of the applicant. Further, it is alleged that the respondents-accused arrived at the spot in a Maruti car yet, the applicant failed to disclose the number of the said vehicle. Such lacunae in the case of the prosecution renders it suspicious. As a result, the guilt of the respondents-accused was not proved beyond the shadow of reasonable doubt.

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

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

22.04.2024
Ajay Goswami

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