

214 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-811-MA-2015 (O&M)
Date of decision: 07.03.2024

Nirmal SinghAppellant

Versus

State of Punjab and others ... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Anmol Jeevan Singh Gill, Advocate
for the applicant-appellant

Mr. Sandeep Kumar, DAG, Punjab

HARPREET SINGH BRAR, J.

CRM-14942-2015

This is an application under Section 5 of the Limitation Act, 1963 seeking condonation of a delay of 14 days in filing the application under Section 378(4) of the Cr.P.C.

For the reasons mentioned in the application, the same is allowed and the delay of 14 days in filing the said application is condoned.

CRM-A-811-MA-2015

1. The present application under Section 378(4) of the Cr.P.C. is preferred against the judgment of acquittal dated 19.01.2015 passed by learned Judicial Magistrate Ist Class, Tarn Taran in Complaint No. 397 dated 04.01.2011 filed under Sections 427,380, 379,323,324,506,148,149,435 of the Indian Penal Code (hereinafter 'IPC').

2. Briefly, the facts are that on 10.11.2010, when complainant-Jaswinder Singh was visiting the police station, the respondents-accused formed

an unlawful assembly armed with deadly weapons and entered his field. On instigation by Dewan Singh, Sukhwant Singh lit a matchstick and set his *prali* worth Rs. 10,000/- on fire. The incident was allegedly motivated by the fact that the accused were in a civil litigation with the complainant regarding 6 marlas of land.

3. On finding a prima facie case, notice of accusation under Section 138 of the N.I. Act was issued upon the accused to which he pleaded not guilty and claimed trial. The complainant examined 3 witnesses to prove his case. All incriminating evidence was put to the respondents-accused, and their statements under Section 313 Cr.P.C. was recorded, wherein they pleaded false implication and examined 1 witness in their defence. On the basis of material available on record, the learned trial Court acquitted the respondents-accused vide judgment dated 19.01.2015.

4. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the complainant was at the police station when the alleged occurrence took place and the complaint is based on the version as narrated by his wife CW2-Sukhwinder Kaur. Therefore, the evidence rendered by the complainant is merely hearsay. Moreover, CW2- Sukhwinder Kaur stated that Sukhwant Singh lit the *parali* on instigation by Dewan Singh. However, the same is not corroborated by the statement of CW3-Jaswinder Singh as he makes no mention of the same. While the complainant has placed photographs of the burnt *prali*, the photographer has not been examined.

5. Furthermore, the incident allegedly took place on 10.11.2010, however the rapat no. 19 regarding the same was lodged with the police on 06.12.2010. The complainant has failed to explain the inordinate delay of 26

days in reporting the said incident to the police. The complaint (*supra*) has also been filed on 04.01.2011, after a delay of 1 month 25 days and does not even mention the fact that a police complaint was lodged.

6. 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. (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.

7. In view of the facts and circumstances of the case, this Court finds that learned counsel for the applicant 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 present petition and leave to appeal is denied.

(HARPREET SINGH BRAR)
JUDGE

07.03.2024
Neha

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