



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

CRR-3291-2016 (O&M)
Date of decision: 05.08.2024

Prahlad ...Petitioner

Versus

Dinesh and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Parul, Advocate for
 Mr. Chetan Das Ranga, Advocate for the petitioner.

Mr. S.K. Yadav, Advocate for respondent No.1.

Mr Vikas Bharadwaj, AAG, Haryana

HARPREET SINGH BRAR, J.(ORAL)

CRM-28549-2016

The present application is filed under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 603 days in filing the instant revision petition.

For the reasons mentioned in the present application, the delay of 603 days in filing the instant appeal is condoned.

CRR-3291-2016

1. The present revision is preferred against impugned judgment dated 29.08.2014 passed by the learned Principal Magistrate, Juvenile Justice Board, Rewari vide which respondent No.1 was acquitted of the charges framed against him in the case stemming from FIR No. 88 dated 14.11.2012 registered under Section 376, 511, 450 IPC at Police Station Jatusana, Rewari.
2. Briefly, the facts are that on 29.10.2012, the petitioner-complainant saw respondent No.1 taking his 7-year-old daughter Deepika into a room and removing her clothes. Respondent No.1 attempted to rape the



daughter of the petitioner which caused her to start screaming. The petitioner arrived at the spot and pushed respondent No.1 away. The incident was also witnessed by Ajit and Anil, who had also reached the spot.

3. Having heard the learned counsel for the petitioner and perused the record of the case with his able assistance, it transpires that the FIR(supra) was lodged on the basis of complaint dated 14.11.2012, however, the incident pertained to 29.10.2012. As such there is a delay of 16 days in lodging the FIR, which remains unexplained on the part of the prosecution. Moreover, the complaint (Ex. PW1/A) reflects that the victim did not raise any alarm at the time of the alleged incident. In fact, detailed information with respect to the act of respondent No.1 is also not available in the complaint (Ex. PW1/A). Further, the investigating officer admitted that the police authorities did not visit the scene of the crime. In his cross examination, the investigating officer testified that Ajit and Anil were relatives of the petitioner, making them interested witnesses. Moreover, they arrived at the spot after the alleged incident, as such, they are not eye witnesses either. The investigating officer also failed to join Bhoom Singh, Sarpanch or any other respectable of the village as independent witnesses, in the investigation, however, Bhoom Singh appeared as DW1 and deposed in favour of respondent No.1.

4. During her examination-in-chief, PW3-victim, has made significant improvements and deposed that that respondent No.1 was caught in the act by her father i.e. the petitioner, however the time and place of the alleged incident is not clear. Further, the conduct of the victim depicts that the alleged incident was in fact consensual in nature. During the enquiry made by DSP, Kosli, the victim had in fact deposed that she was not raped by



respondent No.1. Her statement is not even supported by the statement of the petitioner, father, or her mother. In fact, her mother, while appearing s PW2, stated that respondent No.1 was sitting on the cot after having attempted to rape the victim, which is rather unlikely.

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. (*See H.D. Sundara and others vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram vs. State of H.P., 1973 (2) SCC 808 and Chandrappa and others vs. 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 discussion above, this Court finds that learned counsel for the petitioners has failed to point out any perversity or illegality in findings recorded by the learned Courts below, which warrants any interference. Accordingly, the present revision petition is dismissed, being bereft of any merit.

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

(HARPREET SINGH BRAR)
JUDGE

05.08.2024
manisha

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