

214

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1152-2020 (O&M)

Date of Decision: 24.04.2024

BHUPINDER KAUR

...Petitioner

Versus

STATE OF HARYANA AND ANR.

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ishan Bhardwaj, Advocate
For the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana

Mr. Ishan Khetarpal, Advocate
For respondent no.2.

HARPREET SINGH BRAR, J. (ORAL)

CRM-24200-2020

This is an application under Section 5 of the Limitation Act seeking condonation of delay of 152 days in filing the accompanied Criminal Revision.

For the reasons mentioned in the abovesaid application, the same is allowed and the delay of 152 days stands condoned.

CRR-1152-2020

1. The present revision petition has been preferred against the impugned judgement dated 19.07.2019 passed by learned Additional Sessions Judge, Kaithal in criminal appeal No.103 of 2016 as well as the judgement dated 18.07.2016 passed by Sub-Divisional Judicial Magistrate, Guhla, whereby, respondent no.2-accused was acquitted of the charges framed against

him in FIR No.199 dated 20.12.2014 registered under Section 354 of IPC at Police Station-Cheeka, Kaithal.

2. Briefly, the facts are that an application dated 18.11.2014 moved by Jitender who is the brother of the petitioner before IG Police, Karnal seeking his exoneration after an inquiry in FIR No.76 dated 03.06.2014 registered under Sections 148, 149, 452 and 307 of IPC upon complaint moved by respondent no.2 in which three accused were arrested but Jitender was declared a Proclaimed Offender by the concerned Court. The said application was marked to DSP Indri for investigation. During the inquiry, it came to the fore that earlier the present petitioner had informed her brother Jitender that she was molested by respondent no.2 Gurdayal Singh. Upon which, Jitender went to warn Gurdayal but the other co-accused namely Swaran Singh, Harpreet and Nirvair Singh quarreled with Gurdayal and inflicted injuries upon him leading the abovesaid FIR No.76 dated 03.06.2014. It was also found during the investigation that Jitender went to the spot of the said quarrel and rescued Gurdayal Singh. Further, it was found that Gurdayal used to molest the present petitioner in absence of her husband Nirvair Singh. In consequence of the said investigation, a zero FIR dated 20.12.2014 was registered against respondent no.2-Gurdayal Singh under Section 354 IPC at Police Station- Indri and the same was sent to Police Station-Cheeka for further investigation. Upon receiving the said FIR, the investigation was conducted by the local police. In consequence, respondent no.2 was charged for commission of offence punishable under Section 354 IPC by the learned trial Court, however, he was ultimately acquitted of the charges framed against him vide judgement dated 18.07.2016. Further, the learned trial Court vide the same judgement, ordered a written complaint to be filed in the Court of learned CJM, Kaithal as per

Section 340 Cr.P.C. read with Section 195 Cr.P.C. against the petitioner and some of the of the police officials examined by the prosecution for having committed an offence under Sections 193, 196, 199, 209, 211 of IPC. Thereafter, the petitioner-complainant preferred an appeal against the said judgement which was also dismissed on merits vide the impugned judgement dated 19.07.2019. Aggrieved, the petitioner has approached this Court by way of the present revision petition.

3. Learned counsel for the petitioner vociferously contends that the prosecution version has been duly corroborated by the testimonies of the petitioner-victim PW3 as well as other prosecution witnesses. He further submits that the learned trial Court failed to consider that no married woman would come forward to humiliate herself in the society just to wreak vengeance upon someone. Also, no brother would use his sister to settle scores with someone. He further submits that the FIR in which respondent no.2 was acquitted resulted from a detailed inquiry conducted by the local police as well as concerned police from Indri. It is further contended that respondent no.2 simply denied the allegations but failed to take a specific stand as clear from his statement recorded under Section 313 Cr.P.C. He further submits that the only reason the petitioner did not file any complaint on previous occasions of molestation is because the matter was compromised before the village panchayat.

4. Learned counsel for the petitioner further contends that delay of few months in lodging the FIR in the present case does not matter as per the settled law, since in a traditional society like India, where the reputation of a woman is involved, delay in lodging the FIR is not fatal to her case. He further submits that statement made by the eye-witness PW5 has been completely

ignore by the learned trial Court. He further contends that evidence of the prosecution was wrongly closed on 17.02.2016 without procuring the most important witness to the case, i.e., Jatender and that non-examination of the said witness by the prosecution can not be held to cause prejudice to the case of the victim.

5. Learned State counsel contends that the judgements passed by the learned Courts below are wrong and contrary to the facts as well as law and therefore, require re-appreciation of the entire facts available on record and are liable to be set aside.

6. Learned counsel for respondent no.2 contends that the learned Courts below have passed the impugned judgements after proper appreciation of the material on record and thereby, no interference is warranted by this Court.

ANALYSIS AND OBSERVATIONS

7. I have heard learned counsel for the parties and perused the paper-book with their able assistance. Interestingly, complainant-Jitender @ Mattu, i.e., the brother of the present petitioner on whose application the entire investigation came into motion, was not examined by the prosecution. Rather, his testimony was given up by the learned APP for the State. Further, the application moved by Jitender has not been proved through the testimony of any of the official witnesses. Moreover, in the said application, there is not even a whisper about the fact that respondent no.2 outraged the modesty of the petitioner and the said application pertains to another FIR in which respondent no.2 is the complainant. Further, it has been alleged by the petitioner that respondent no.2 outraged her modesty on multiple occasions but she did not inform even a single person from her family or made any official complaint in this regard. Moreover, the averments made in the application moved by

Jitender and the testimony of the petitioner are completely antithetical to each other. Further perusal of the case file reveals that cross-examination of the prosecution witnesses including the eye-witness PW5 has led to serious doubts in the version of the petitioner. It appears that the entire story was falsely concocted by the petitioner in response to the FIR lodged by respondent no.2 against her husband and other family members. All of the aforesaid facts when clubbed together are sufficient for this Court to affirm the order under challenge in the present petition.

8. Furthermore, 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 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.

9. A two Judge Bench of Hon'ble Supreme Court in case of **Chandrappa (supra)** has laid down the parameters with regard to the power of

appellate Court while dealing with an appeal against an order of acquittal.

Speaking through Justice C.K. Thakker, the following was held:

"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own

conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

10. In view of the facts and circumstances of the case, this Court finds that learned counsel for the petitioner has failed to point out any perversity or illegality in findings recorded by the learned Courts below which warrants interference by this Court. As such, there is no merit in the present petition and the same stands dismissed.

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

(HARPREET SINGH BRAR)
JUDGE

24.04.2024
Ajay Goswami

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