

**CRM-A-1180-2024****-1-****210 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH****CRM-A-1180-2024 (O&M)****Date of Decision: 15.10.2024****Vijay Luxmi****...Applicant****Versus****Rohtash and others****...Respondents****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR****Present: - Mr. Priyanshu Kamra, Advocate
for the applicant.***********Harpreet Singh Brar, J. (Oral)****CRM-35292-2024**

The present application is filed under Section 5 of the Limitation Act, 1963, seeking condonation of delay of 733 days in filing of the present appeal. For the reasons mentioned in the application, the same is allowed and the delay of 733 days is condoned.

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1. The present application is preferred under Section 419(4) of BNSS against the judgment of acquittal dated 10.05.2022 passed by learned Judicial Magistrate 1st Class, Abohar in the case stemming from Criminal Complaint, bearing No. COMI-318-2016, dated 09.11.2016 under Sections 452, 294, 367, 354, 509 and 34 of IPC.

2. Briefly, the facts are that on 28.07.2016 at about 12/12:30 PM, the applicant-complainant was in the front courtyard of her house and was alone at the time, when the respondents-accused arrived in a jeep and parked the car in front of the house of the complainant. Since the main gate of the house was open, they entered her house and outraged her modesty. They tore the clothes of the

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applicant, abused her and made obscene gestures. Further, the respondents touched the private parts of the applicant and caused physical injury to her. When the applicant raised a hue and cry, the respondents forcibly attempted to put her in the car. However, on hearing the cries of the applicant, her mother-in-law came to her rescue and saved her from the clutches of the respondents. Subsequently, the applicant was taken to Civil Hospital, Abohar by her husband, where she was medico-legally examined. Since the police was neither recording her statement nor taking any action on the complaint of the applicant, she filed a criminal complaint before the Magistrate.

3. Having heard the learned counsel for the applicant and after perusing the record of the case with his able assistance, it transpires that it was not the first time that the applicant filed a complaint against respondent No.1. Earlier also, an FIR bearing No. 85, dated 03.08.2016 under Section 509 IPC was registered against respondent No. 1 with regard to incident in question. During investigation, it was found that a quarrel had ensued because respondent No.1 was driving a tractor which hit the ramp constructed outside the house of the complainant and no allegations qua outraging the modesty of the applicant were found to be true. It was held that a false case was fastened upon respondent No.1 by the applicant due to party rivalry and a cancellation report was presented in that case. Moreover, the version set up by the applicant suffers from material contradictions which suffocate the prosecution case completely. While in her complaint, the applicant stated that the respondents successfully managed to put her in the jeep, in her testimony as prosecution witness, she contended that the respondents tried to put her in the jeep.

4. Furthermore, no independent witnesses were examined by the prosecution to establish its case. The alleged occurrence took place during day



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time in an open place i.e. the courtyard of the house of the applicant. It was admitted by the applicant in her cross-examination that there are several other houses on the street where her house is situated. Yet surprisingly, nobody came to the rescue of the applicant or witnessed the alleged occurrence especially when the respondents were trying to drag the applicant out of her house and forcefully trying to get her to enter the car. Resultantly, the prosecution failed to prove the guilt of the respondents-accused beyond the shadow of reasonable doubt and as such, no interference is warranted by this Court.

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

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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.

15.10.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>