



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

213

CRM-A-2813-2019

Date of Decision: 16.09.2024

State of U.T. Chandigarh

...Applicant

Versus

Ashish

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: - Mr. Anil K. Lamdharia, Addl. PP for U.T., Chandigarh

HARPREET SINGH BRAR, J. (ORAL)**CRM-38759-2019**

The present application has been filed under Section 5 of the Limitation Act, 1963, seeking condonation of delay of 299 days in filing the application under Section 378(3) Cr.P.C.

For the reasons mentioned in the application, the same is allowed and the delay of 299 days in filing the aforesaid application is condoned.

CRM-A-2813-2019

1. The present application is preferred under Section 378(3) of the Cr.P.C. against the judgment of acquittal dated 13.09.2018 passed by learned Additional Sessions Judge-cum-Judge Special Court, Chandigarh, in the case stemming from FIR, bearing no. 57 dated 16.03.2018 under Sections 363 and 366 of the IPC registered at Police Station Mauli Jagran, Chandigarh.
2. Briefly, the facts are that the present case was registered on the basis of the statement of the complainant (mother of the victim) made before the police, alleging that her daughter, who was seventeen and a half years old



at the time of the alleged occurrence had gone to the market on 15.03.2018 at about 12 p.m. However, when she did not return home, her family members started looking for her, but to no avail. The complainant conveyed her suspicions regarding the respondent-accused, who had earlier enticed the victim to elope with him on the pretext of marriage. On the basis of this, FIR was registered against the respondent-accused.

3. Having heard the learned State counsel and after perusing the record of the case with his able assistance, it transpires that the victim, while appearing as PW-2 has admitted that she left with the respondent-accused of her own accord. She further stated that the respondent-accused had not committed any wrong act with her. The narrative put forth by the victim remained the same in her statement under Section 164 Cr.P.C. as well as her deposition as PW-2. In fact, she has not implicated the respondent either in her statement under Section 164 Cr.P.C. or before the doctor. Dr. Shilpa, Medical Officer appeared as PW-3 and stated that the victim did not give consent for her medical examination. As such, there is no material in the form of medical evidence to bolster the stand of the prosecution. As a result, the evidence led by the prosecution do not inspire confidence of this Court.

4. Furthermore, the mother of the victim i.e. the complainant, who was examined as PW-1, has admitted that she did not see the victim actually leaving with the respondent-accused. In fact, she has stated that previously as well, when her daughter had gone missing, about two and a half years ago, she had filed a complaint against the respondent, but she did not pursue the same. Therefore, it appears that no cogent or convincing evidence is available on record to indicate culpability on the part of the respondent.



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 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 in *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 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.

16.09.2024
manisha

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No