

CRM-A-72-MA-2016

223 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-72-MA-2016

Date of Decision: 15.01.2024

SUDERSHAN MALIK AND OTHERS

...Applicants-Appellants

Versus

ROHTASH AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amit Jain, Advocate
for the applicants-appellants.

HARPREET SINGH BRAR, J. (ORAL)

CRM-1608-2016

This is an application under Section 5 of Limitation Act, 1961 seeking condonation of delay of 28 days in filing the accompanying application under Section 378(4) Cr.P.C.

For the reasons mentioned in the application, the same is allowed and the delay of 28 days in filing the accompanying application is condoned.

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1. This instant application under Section 378(4) CrPC is preferred against the order of acquittal dated 03.10.2015 passed by learned Additional Chief Judicial Magistrate, Mewat vide which the present respondents have been acquitted in criminal complaint COMA No.165 of 2015 filed under Sections 452, 458, 379, 380, 149, 506, 120-B of the Indian Penal Code, 1860 & Sections 25-54-59 of the Arms Act, 1959.

2. The minimal facts as necessary for disposing this application are that the applicants who are also brothers, are alleged owners of the shop qua which the dispute arose. The above-mentioned complaint was filed through their Special Power of Attorney - Dholan Singh. The said shop was given on rent to one Ram Kumar, whose name is also incorporated in the municipal records. The possession of the said shop was further transferred to Dholan Singh who used it for running a business of submersible motors & pipes. On 17.01.2006, in order to take possession of the shop, the respondents tried to break open the lock of the shop in question which led to a dispute and the matter was reported to the police. Then on the next day, the respondents while carrying weapons including country-made pistols (katta) in their hands forcibly entered into the shop by breaking open its lock and threw out the material consisting of submersible motors & pipes while making threats towards Dholan Singh.

3. Having heard the learned counsel for the applicant and after perusing the record with his able assistance, it is clear that Dholan Singh has failed to prove his possession over the shop in question. Furthermore, the allegations made against the respondents fail to attribute any specific role towards them. The learned trial Court has correctly extended the benefit of reasonable doubt to the respondents and hence, the above-mentioned order of acquittal passed by the learned trial Court stands validated.

4. 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

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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.

5. In view of the facts and circumstances of the case, this Court finds that learned counsel for the applicant-appellant 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.

(HARPREET SINGH BRAR)
JUDGE

15.01.2024
Ajay Goswami

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