

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRR-346-2016(O&M)

Date of Decision:-16.01.2024

Tarun Rishi.

.....Petitioner.

Vs.

The State of Punjab & Anr.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Ms. Dolli Sharma, Advocate Amicus Curiae for the Petitioner.

Mr. Harkanwar Jeet Singh, Assistant Advocate General, Punjab.

JASJIT SINGH BEDI, J.(ORAL)

CRM-2887-2016

The prayer in the application under Section 5 of the Limitation Act is for condonation of 57 days delay in filing the present revision petition.

Heard.

For the reasons stated in the application, the same is allowed and delay of 57 days in filing the present revision petition is condoned.

CRR-346-2016

The present revision petition has been filed against the judgment dated 26.08.2015 passed by Additional Sessions Judge (A), Gurdaspur whereby the judgment of conviction and order of sentence dated 23.01.2015 passed by the Judicial Magistrate Ist Class, Gurdaspur has been set aside and the accused has been acquitted of the charges framed against

him.

2. The brief facts of the case are that the FIR No.15 dated 24.01.2010 under Sections 457/380 IPC P.S. Dhariwal came to be registered at the instance of the complainant-petitioner Tarun Rishi with the allegations that the landlord of his father namely Surinder Singh-respondent no.2/accused had broken into the tenanted premises and had committed the theft of various articles belonging to his (complainant's) father.

3. Pursuant to the conclusion of the investigation the report under Section 173(2) Cr.PC was presented and on conclusion of the trial the respondent no.2 came to be convicted and sentenced by the court of Judicial Magistrate Ist Class, Gurdaspur vide judgment dated 23.01.2015 as under:-

Offence under Sections	Imprisonment	Fine	In default of fine with rigorous imprisonment
411 IPC	RI for 1 Year	Rs.500/-	RI for one month

4. The convict Surinder Singh preferred an appeal before the Court of Additional Sessions Judge, Gurdaspur and vide judgment dated 26.08.2015 the judgment of conviction and order of sentence dated 23.01.2015 was set aside and the accused was acquitted of the charges framed against him.

5. The petitioner/complainant has impugned the aforementioned judgment of acquittal in the present petition.

6. The learned Amicus Curiae for the petitioner contends that the Appellate Court had set aside the well reasoned judgment of conviction passed by the Trial Court without any basis whatsoever. It was quite apparent from the record that the respondent no.2/accused had been found in possession of the stolen property which had been duly identified by the petitioner. By no stretch of imagination could it be held that the accused

was unaware of the articles in question lying in his house. She, therefore, contends that the judgment of acquittal was liable to be set aside and the judgment of the Trial Court ought to be affirmed.

7. The Counsel for the State on the other hand contends that no fault could be found with the well reasoned judgment of the lower Appellate Court and, therefore, the present petition was liable to be dismissed.

8. I have heard learned Counsel for the parties.

9. A perusal of the file would reveal that the prosecution has miserably failed to produce any document on record to prove the ownership as well as the possession of the respondent no.2/accused over the house from which the allegedly stolen articles had been recovered. Similarly the prosecution has also failed to prove on record the possession of respondent no.2/accused over the house of his near relative Hardev Singh from which certain stolen articles had allegedly been recovered. In fact it was obligatory on the part of the prosecution to prove the possession of the respondent no.2/accused over the premises from where the alleged recovery was effected but the same has not been done. Further non recording of the disclosure statement of the respondent no.2/accused before effecting the alleged recovery itself belies the case of the prosecution and the possibility of his false implication cannot be ruled out. In fact the prosecution was also required to prove that some other person other than the respondent no.2/accused had possession of the stolen property before he got possession of the same as in the instant case the allegedly stolen articles were purportedly recovered from the possession of the respondent no.2/accused after a lapse of more than 03 months. Therefore, the Trial Court acted on conjectures and surmises to hold that the offence punishable under Section

411 IPC was committed by the respondent no.2/accused.

10. In view of the above, I find no reason to interfere with the well reasoned judgment of acquittal recorded by the Additional Sessions Judge, Gurdaspur and, therefore, the present revision petition stands dismissed.

Ms. Dolli Sharma, Advocate (Enrl.No.PH5749/2022), #1304/0678, Shivalik Vihar, D-Block, Nayagaon, Mohali, Mobile No.8968250656 who was appointed today itself as Amicus Curiae to assist the Court on behalf of the petitioner shall be paid an amount of Rs.12,000/- as fee.

(JASJIT SINGH BEDI)
JUDGE

January 16, 2024
Vinay

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