

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-49351-2023,
CRM-41642-2015 IN/And
CRM-A-2050-MA-2015
Date of Decision:16.01.2024**

Municipal Council Dhuri

...Appellant

vs.

Satbir Singh

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

**Present : Mr. Piyush Sharma, Advocate
for the applicant/appellant.**

N.S.Shekhawat J. (Oral)

CRM-49351-2023

1. The present application has been filed under Section 482 Cr.P.C with a prayer to restore the main case i.e CRM-A-2050-MA-2015 **(O&M)**, which was dismissed for non-prosecution vide order dated 17.10.2023.

2. I have heard learned counsel for the applicant.

3. For the reasons mentioned in the application, the application is allowed and the main case is restored to its original number and status.

CRM-41642-2015

1. The applicant/appellant has moved the present application under Section 5 of Limitation Act for condonation of delay of 337 days in filing the present appeal against the judgment of acquittal dated 25.07.2014, whereby the respondent was ordered to be acquitted of the charge under Section 172-A of the Punjab Municipal Act 1911.

2. Learned counsel for the applicant/appellant submits that the judgment of acquittal was passed by the Trial Court on 25.07.2014 and after getting the certified copy, the appeal was filed before the Court of Additional

Sessions Judge, Sangrur on 29.08.2014 under the bonafide impression that the appeal is maintainable before the Sessions Court. It transpired that as a matter of fact, the appeal was maintainable before the Hon'ble High Court and the appeal was withdrawn on 01.10.2015 and immediately, thereafter the present appeal was filed on 14.12.2015. He further submits that the delay of 337 days had occurred in filing the present appeal on account of the aforesaid bonafide impression and the wrong advise given by the learned counsel in the Court.

3. This Court finds that there are sufficient reasons for condoning the delay in filing the present appeal before this Court. For the reasons mentioned the application stands allowed, the delay of 337 days in filing the present appeal is ordered to be condoned.

Main case

1. The applicant/appellant has filed the present application under Section 378 (4) Cr.P.C for grant leave to appeal against the impugned judgment of acquittal dated 25.07.2014, passed by the Court of Judicial Magistrate First Class, Dhuri, whereby the respondent was ordered to be acquitted of the charge under Section 172-A of the Punjab Municipal Act 1911. In fact, the applicant/appellant had filed the complaint under Section 172-A of the Punjab Municipal Act 1911 (hereinafter referred to as the "Act") against the respondent with the Court of Judicial Magistrate Ist Class, Dhuri.

2. Facts as alleged by the applicant/appellant are that on 22.11.2010, in order to encroach upon municipal property, respondent started to raise construction near the residence of Bhim Sain, Ex President of M.C., Dhuri. Consequently, applicant/appellant issued notice no.2588/S.O. dated 22.11.2010

to the respondent which was duly received by the respondent. However, he did not stop to raise the illegal construction. Another notice dated 29.11.2010 was issued to the accused which was refused by him so the notice was affixed at his residence on 02.12.2010. Applicant/appellant alleged that accused has raised construction illegally in violation of Punjab Municipal Act and respondent is liable to be punished for the same.

3. Learned counsel for the applicant/appellant argued that the impugned judgment is based on mis-appreciation of facts and law. Learned counsel further submitted that the appellant had produced sufficient evidence to prove the ownership of the plot and it was conclusively stated that the construction was raised by the respondent without any justification. Even no defence evidence led by the respondent to prove his innocence. Learned counsel further submitted that on 22.11.2010, respondent started raising construction on his plot and had also encroached some area which was meant for public use. Even after issuance of mandatory notice, respondent did not budge and continued to raise construction. He further contends that the learned Trial Court had mis-read Section 172-A of the “Act” and the impugned judgment is based on whims and liable be set aside by this Court.

4. I have heard learned counsel for the applicant/appellant and perused the record carefully.

5. From the record, it is evident that the main charge against the present respondent was that the construction was being raised by the respondent without getting site plan approved from the applicant/appellant, whereas, the evidence led by the parties before the Trial Court clearly showed that the respondent had got the plan approved from the applicant/appellant in 2004,

however, the construction could not be raised by him as per the approved plan within a period of 01 year.

6. This Court finds sufficient force in the findings recorded by the Trial Court that there was no evidence to show that the disputed site was a public land and it was owned by the applicant/appellant. The applicant/appellant produced CW-1 Gagandeep Singh, CW-2 Tarsem Lal Building Clerk and CW-3 Iqbal Mohd. Assistant Engineer, however, from their testimonies, it could be clearly inferred that the site plan was owned by the respondent himself. Even CW-1 Gagandeep Singh was the most material witness and had given answers to the main questions put to him. Even CW-3 Iqbal Mohd. Assistant Engineer clearly admitted in his cross-examination that except for foundation measuring 16' x 14', the remaining portion of the building had been constructed as per site plan. In fact, the evidence led by the prosecution itself proved that the respondent had made no encroachment on the land owned by the Municipal Committee. Even otherwise, I have gone through the findings recorded by the Trial Court and find no reasons to interfere with the same as the impugned judgment does not suffer from any material irregularity, illegality or perversity. Thus, the prayer for grant of leave to appeal is declined and the application is ordered to be dismissed.

16.01.2024
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(N.S.SHEKHAWAT)
JUDGE

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