

229

2024.PHHC:100614



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

**CRM-A-29-2019 (O&M)
Date of Decision: 31.07.2024**

Sagar

....Applicant
Vs.

Om Parkash and others

Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr.Satbir Singh Gill, Advocate
for the applicant/appellant.

N.S.SHEKHAWAT, J.

CRM-829-2019

1. The applicant has filed the present application under Section 5 of the Limitation Act for condonation of delay of 272 days in filing the application for grant of special leave to appeal.

2. Learned counsel for the applicant/appellant contends that vide the impugned judgment dated 05.12.2017, the trial Court had acquitted the respondents. However, due to wrong legal advice, the applicant-appellant filed an appeal before the Court of Sessions on 15.01.2018. However, the said appeal was withdrawn on 28.09.2018 as the appeal was only maintainable before this Court. After withdrawing the appeal from the Court of Sessions Judge, the appellant has filed the present appeal before this Court.

3. I have heard learned counsel for the applicant-appellant and perused the record.

4. For the reasons mentioned in the application, the delay of 272 days in filing the application for leave to appeal is ordered to be condoned.

5. CRM stands disposed off.

CRM-A-29-2019

1. The appellant has filed the present application under Section 378 (4) Cr.P.C. with a prayer to grant special leave to appeal against the impugned judgment dated 05.12.2017 passed by the Judicial Magistrate 1st Class, Dabwali, whereby the respondents have been ordered to acquitted of the charge.

2. The appellant/complainant had filed the complaint under Sections 323, 504, 506 and 34 IPC in the Court of Judicial Magistrate First Class, Dabwali by alleging that at about 11:00 am on 30.07.2014, the applicant was tying animals in front of his house under a tree. In the meantime, all the accused/respondents, who were having lathis in their hands, came to him. Murti Devi (respondent No.3) exhorted them to teach a lesson for not allowing their children to swing on the tree. On this accused Hansraj and Om Prakash gave a blow with lathi to him, which hit him on his forehead. Devi Lal (respondent No.4/accused) gave a blow with lathi on the left shoulder of the complainant. On hearing the noise, Ramesh Kumar, his brother and Ram Chander son of Sahi Ram rushed to the spot and rescued him from the clutches of the accused. Thereafter the accused got recorded a false case bearing FIR No.227 dated 01.08.2014 registered under Sections 323/341/506 read with Section 34 IPC at Police Station Sadar Dabwali against him and his brother Ramesh Kumar.

3. After recording of the preliminary evidence, the respondents

were summoned for committing the offence punishable under Sections 323, 506 read with Section 34 IPC. In pre-charge evidence, four witnesses namely Sagar as PW-1, Ramesh Kumar as PW-2, Ram Chander as PW-3 and Dr. Vinay Singla as PW-4 were examined and the evidence was closed. After closure of the evidence, the respondents were charge sheeted for committing the offence under Sections 323, 506 read with Section 34 IPC. The applicant again examined above-said four witnesses in after charge evidence.

4. After the evidence was closed by the prosecution, the statement of respondents were recorded under Section 313 Cr.P.C. and they pleaded their false implication.

5. Learned counsel for the appellant vehemently argued that the trial Court had completely overlooked the evidence led by the prosecution in the present case and had adopted a hyper-technical approach. He further contends that there was no delay in filing the complaint before the trial Court. In fact the appellant had been frequently visiting the police and requested them to lodge the FIR, but the police delayed the matter on one pretext or the other and rather a false case FIR No.227 dated 01.08.2014 under Sections 323/341/506/34 IPC at Police Station Sadar, Dabwali was registered against the appellant and his brother. Still further, the trial Court had failed to appreciate that the witnesses produced by the prosecution were consistent and proved the offence beyond the shadow of reasonable doubt.

6. I have heard the submissions made by the learned counsel for the appellant and find no grounds to interfere with the impugned judgment passed by the trial Court.

7. In the present case, the occurrence had happened at a public place in a thickly populated area. However, in support of his testimony, the

appellant had only produced his brothers Ramesh Kumar and Ram Chander as the prosecution witnesses. The said witnesses, being the real brothers of the applicant/complainant, were interested witnesses and there was no independent corroboration of the entire prosecution case. Moreover, with regard to the same occurrence, the respondents/accused had already lodged one FIR No.227 dated 01.08.2014 under Sections 323/341/506/34 IPC registered at Police Station Sadar, Dabwali against the applicant and other witnesses.

8. In view of the above-said discussion, this Court is of the considered view that the trial Court was justified in holding that the present complaint seemed to be a counter blast of the said FIR. Still further the occurrence had taken place on 30.07.2014 and the matter was reported to the police. However, on enquiry, it was found to be false and ultimately after a long delay, the complaint was filed on 26.08.2014. Even no explanation was furnished by the complainant for such delay in filing the complaint.

9. It has been held by the Hon'ble Supreme Court in the matter of **“Bhaskarrao and others Vs. State of Maharashtra”, 2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228** as follows:-

*“14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in **Tota Singh and Anr. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974** -*

"The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the

testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappraisal, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a reappraisal of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

15. In *Ramesh Babulal Doshi v. State of Gujarat, 1997(3) RCR (Criminal) 62 : 1996 CriLJ 2867*, this Court observed:

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing

with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

10. Still further in **Criminal Appeal No(s.) 410-411/2015 [Ravi Sharma Vs State (Government of N.C.T. of Delhi) and another]**, decided on 11.07.2022, Hon'ble the Supreme Court has held as under:-

*"Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.') while deciding an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant portion of a recent judgment of this Court in **Jafarudheen and Others v. State of Kerala (2022 SCC Online SC 495)** as follows:*

"25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused.

Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal.

Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."

11. Considering the above-said peculiar facts and circumstances of the present case, coupled with the reasons aforementioned, this Court is of

the view that the instant application for leave to appeal is bereft of merit and without any substance, thus, it must fail. Consequently, the impugned judgment dated 05.12.2017, passed by the Court of Judicial Magistrate Ist Class, Dabwali, is ordered to be upheld.

12. Resultantly, with the above-said observations made, the application for special leave to appeal stands dismissed.

13. Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation for filing the appeal, in accordance with law.

31.07.2024
mks

(N.S.SHEKHAWAT)
JUDGE

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