



227 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-25669-2024 in/and
CRM-A-860-2024 (O & M)
Date of decision: 07.01.2025

VIRENDER

...APPLICANT/APPELLANT

V/S

MAHENDER SINGH AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Yashika Walia, Advocate
for the applicant/appellant.

HARPREET SINGH BRAR, J. (ORAL)

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This is an application for condonation of delay of 55 days in filing the present application.

For the reasons mentioned in the application, same is allowed.

Delay of 55 days in filing the appeal is hereby condoned.

MAIN CASE

1. The present application is preferred against the judgment of acquittal dated 19.01.2024 passed by learned Additional Chief Judicial Magistrate, Hisar, in a complaint filed under Sections 323/324/452/506/34 of IPC registered at Police Station Sadar, Hisar.

2. Complainant has filed the present complaint against his father (accused/respondent No.1) and brothers (accused/respondent Nos.2 & 3), claiming that he had property disputes with the accused/respondents. On 19.06.2015, accused alongwith others forcibly entered the complainant's house when his wife Mukesh was alone and molested her with bad intention, gave her



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beatings, threw away complainant's articles, committed theft of money, gold etc., confined his wife and threatened to kill her, regarding which, complainant's wife lodged FIR no.579 dated 20.6.2015 under sections 147, 149, 452, 342, 323, 354A(2), 506, 379 IPC, PS Sadar Hisar against accused. However, police arrested only Raghu Mahender, Mahipal and Anil and did not arrest the others namely Mahender Singh, Chanderpati, Upasna, Narender, etc. Rather police of PS Sadar Hisar pressurized the complainant and his wife to effect compromise with the accused and threatened that if they did not do so, complainant and his family members would be involved in false cases, regarding which, complainant moved application through post on 26.06.2015 to SP Hisar, IG Hisar and DGP Panchkula. Further, on 01.07.2015 at about 3-3:15 PM when complainant and his wife Mukesh were present at their house no.78, Saket colony, all the three accused forcibly entered their house. They were armed with *dandas* and started beating the complainant, due to which, complainant sustained several injuries. Upon arrival of his wife, and her raising alarm, the assailants ran away, threatening that if complainant and his wife did not withdraw the case lodged against them, complainant and his family would be killed. Complainant thus became scared. Thereafter, he arranged for a vehicle and got himself medically examined at general hospital, Hisar. However, since he had sustained several injuries, he was admitted to the hospital by doctor. He remained hospitalised from 01.07.2015 to 04.07.2015. Thereafter, ASI Balwan Singh from PS Sadar Hisar alongwith another police official recorded the statement of the complainant. However, no action was taken against the accused. After discharge from hospital, when complainant went to enquire about the action taken against the accused at police post Azad



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Nagar, he was shocked to know that no action was taken against them. Rather, complainant and his wife were pressurised to effect compromise with the accused and were told that this time they had only been given beatings with *dandas* and if they did not withdraw the case, complainant and his family would be killed. Upon failure of police to take action against accused, on 09.07.2015, complainant moved applications to SP Hisar, IG Hisar and DGP Haryana through post, but to no avail. Hence, this complaint.

3. Having heard the learned counsel for the applicant/appellant and after perusing the record of the case with her able assistance, it transpires that the fact regarding the acquittal of accused persons namely Raghu Mahender, Anil and Mahipal in case bearing FIR No.579 dated 20.06.2015 registered at PS Sadar, Hisar, whereby allegedly on 19.06.2015, the accused molested the wife of the complainant by trespassing into their house, was conceded by learned counsel for the complainant at the time of arguments, however, he submitted that an appeal against the said judgment was pending. The present complaint was lodged regarding the occurrence dated 01.07.2015 claiming that the accused trespassed into his house and threatened that if his wife did not withdraw the aforesaid case lodged against them, they would face dire consequences. Complainant has also alleged that even the police officials also pressurized them to effect compromise with accused persons. However, complainant neither specified the name of any police official in this complaint or in his testimony. The complainant claimed that the occurrence took place at house no.78, Saket Colony, Hisar, where the complainant along with his wife was present, however, in the present case, address of the complainant is mentioned as CBC Memorial School, Barwala, District Hisar and a perusal of



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record shows that at the time of alleged occurrence, house no.78, Saket Colony, Hisar was not owned by the complainant and on certain documents of the complainant and his wife, their address was not house no.78, Saket Colony, Hisar but was CBC Memorial School, Barwala and the complainant had not brought any evidence on record to prove that at the time of alleged incident his address was house no.78, Saket Colony, Hisar and he further conceded that even in civil litigations he had mentioned his address as CBC Memorial School, Barwala. Further, the complainant did not allege that any of the accused was armed with a sharp edged weapon and also, PW-3 Dr. Sajjan Kumar, in his cross-examination, deposed that none of the injuries was caused with sharp-edged or pointed weapon. Furthermore, from the CCTV footage brought on record, it has been duly proved that the complainant and his wife forcibly tried to enter into the house of accused persons. Moreover, several civil and criminal litigations were pending between the parties and there was a delay of almost two months in lodging the present complaint. No independent witness was examined by the prosecution to corroborate the testimonies of the complainant and his wife. There is nothing on record to show that any alarm was raised by the complainant or any person present at the spot. As a result, the evidence led by the prosecution do not inspire confidence of this Court.

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 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



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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.

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.

January 07, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

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