
(2012) 07 P&H CK 0212

High Court Of Punjab And Haryana At Chandigarh

Case No: CRM-A-198-MA of 2012 (O and M)

Gurjit Kaur

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision: July 18, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 313, 378(4)
- Limitation Act, 1963 - Section 5

Citation: (2013) 1 RCR(Criminal) 70

Hon'ble Judges: Jasbir Singh, Acting C.J.; Rakesh Kumar Jain, J

Bench: Division Bench

Advocate: G.S. Sandhu, for the Appellant;

Final Decision: Dismissed

Judgement

Jasbir Singh, Acting Chief Justice

CRM No. 18007 of 2012

1. This application has been filed u/s 5 of the Limitation Act for condonation of 73 days" delay in filing the application seeking leave to file an appeal. Application is accompanied by an affidavit. In view of the reasons given in the application, it is allowed and delay in filing the application, seeking leave to file an appeal, is condoned.

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2. This petition has been filed u/s 378(4) Cr.P.C. seeking leave to file an appeal against the judgment dated 30.9.2011 vide which respondent No. 2 was acquitted of the charge framed against him.

3. Heard.

4. It was an allegation against respondent No. 2 that he has committed rape and also threatened and caused minor injuries to the complainant for which an FIR was recorded against him on 26.5.2010 in Police Station Civil Lines, Bathinda.
5. The process of law was initiated on a written complaint Ex.PB made by the complainant against respondent No. 2 wherein she alleged "that she is the divorced wife of accused Gurcharan Singh son of Gurdit Singh. Their marriage was dissolved by a decree of divorce dated 20.12.2007. On 24.1.2008 mother of Gurcharan Singh died. Accordingly, on 4.2.2008, Gurcharan Singh and his father Gurdit Singh convened a panchayat consisting of respectables to the house of the parents of the prosecutrix and requested that on account of the death of the mother of accused Gurcharan Singh, there is no other lady to cook the meals and to look after the minor children of Gurcharan Singh, who remained in the custody of Gurcharan Singh as per the decision of the divorce petition and requested the father of the prosecutrix to send her to their house. Accused and the other members of the panchayat assured the prosecutrix that she would be treated nicely and the decree of divorce would be got cancelled in accordance with law and the marriage of the prosecutrix with the accused would be got regularized. Parents of the prosecutrix agreed to the proposal made by the panchayat and accordingly sent the prosecutrix to the house of the accused. Believing the aforesaid representations made by the accused to be true, prosecutrix consented to resume the cohabitation with the accused. It is further alleged that prosecutrix remained in the house of the accused for about nine months and used to perform the duties of a devoted wife during the said period. However, no step was taken by the accused and his father to legalize marriage despite repeated requests having been made by the prosecutrix. When prosecutrix insisted with force to legalize the marriage, Gurcharan Singh and his family members started maltreating the prosecutrix and flatly refused to accede to her request. Thereafter, prosecutrix refused to cohabit with the accused unless he gets the marriage legalized. On this, Gurcharan Singh became furious and gave beatings to the prosecutrix and forcibly committed intercourse with her and thereafter the prosecutrix was ousted from the house after giving merciless beatings."
6. It was case of the complainant that her consent was taken by making a false promise to re-marry her, whereas, in fact, from the very beginning it was intention of respondent No. 2 to commit rape upon her and not to marry her as stated by him.
7. The complaint was sent to SHO, Police Station Women Cell, Bathinda for enquiry, who submit his report Ex.P-4/A. Thereafter, the matter was even got enquired through DSP (H), Bathinda. His report was brought on record as Ex.PW4/B. After getting legal opinion from the District Attorney at Bathinda, FIR Ex. PW4/E was recorded against respondent No. 2 on 16.6.2010, who was arrested on that very date. Medical examination of respondent No. 2 was got done from Civil Hospital,

Bathinda. The Investigating Officer recorded statements of the witnesses u/s 161 Cr.P.C.

8. On completion of investigation, final report was put in Court for trial. Copies of the documents were supplied to the accused as per norms. Case was committed to the competent Court for adjudication on 20.1.2011. Respondent No. 2 was charge sheeted to which he pleaded not guilty and claimed trial. Prosecution produced 4 witnesses and also brought on record documentary evidence to prove its case.

9. On conclusion of the prosecution's evidence, statement of respondent No. 2 was recorded u/s 313 Cr. P.C. Incriminating material existing on record was put to him, which he denied, claimed innocence and false implication.

10. The trial Judge on appraisal of evidence, found respondent No. 2 not guilty and accordingly he was acquitted of the charge framed against him. Hence, this application.

11. The case of the prosecution was supported only by PW-2-the complainant and PW-3 his father Jang Singh. In their statements, both have alleged that the first marriage between the complainant and respondent No. 2 was dissolved on the basis of a mutual divorce on 20.12.2007. The children were allowed to stay with respondent No. 2. After death of her mother-in-law, she was again taken back to her matrimonial house with a promise that respondent No. 2 will re-marry her. The promise was not fulfilled which led to the filing of a complaint. The trial Judge rightly came to a conclusion that it was a case of consent. So far as making of false promise is concerned, the prosecution failed to prove it on record. It is in evidence that the complainant resided with respondent No. 2 for about 8/9 months. The trial Court further rightly noticed that no forcible sexual intercourse by respondent No. 2 with the complainant was proved on record. In her cross examination the complainant has specifically stated that on 4.2.2008 she joined the company of respondent No. 2 as his wife. The trial Court also rightly noticed that the complaint was filed as a counter blast to a criminal case registered against the complainant side by respondent No. 2 on 4.11.2008 in which PW3-Jang Singh, father of the complainant, her maternal uncle Darshan Singh and brother Lucky and 4/5 more persons were arrayed as accused. This Court feels that the order passed by the trial Court is perfectly justified and as per evidence on record.

12. Their Lordships of the Supreme Court in "Allarakha K.Mansuri v. State of Gujarat, 2002(1) RCR (Cri) 748", held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

13. A Division Bench of this Court in "State of Punjab v. Hansa Singh, 2001(1) RCR (Cri) 775", while dealing with an appeal against acquittal, has opined as under:-

We are of the opinion that the matter would have to be examined in the light of the observations of the Hon"ble Supreme Court in Ashok Kumar v. State of Rajasthan,

1991 (1) SCC 166, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.

14. Similarly, in [State of Goa Vs. Sanjay Thakran and Another](#), and in "[Chandrappa and Others Vs. State of Karnataka](#)", it was held that where, in a case, two views are possible, the one which favours the accused has to be adopted by the Court.

15. In "Mrinal Das & others v. The State of Tripura, 2011(9) SCC 479", decided on September 5, 2011, the Supreme Court, after looking into many earlier judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

An order of acquittal is to be interfered with only when there are "compelling and substantial reasons", for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed.

16. Similarly, in the case of [State of Rajasthan Vs. Shera Ram @ Vishnu Dutta](#), the Hon"ble Supreme Court has observed as under:

7. A judgment of acquittal has the obvious consequence of granting freedom to the accused. This Court has taken a consistent view that unless the judgment in appeal is contrary to evidence, palpably erroneous or a view which could not have been taken by the court of competent jurisdiction keeping in view the settled canons of criminal jurisprudence, this Court shall be reluctant to interfere with such judgment of acquittal.

8. The penal laws in India are primarily based upon certain fundamental procedural values, which are right to fair trial and presumption of innocence. A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefit of such presumption which could be interfered with only for valid and proper reasons. An appeal against acquittal has always been differentiated from a normal appeal against conviction. Wherever there is perversity of facts and/or law appearing in the judgment, the appellate court would be within its jurisdiction to interfere with the judgment of acquittal, but otherwise such interference is not called for.

17. Thereafter, in the above case a large number of judgments were discussed and then it was opined as under:

10. There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against

conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience.

18. Counsel for applicant-appellant has failed to show any error in law on the basis of which interference can be made by this Court in the judgment under challenge. Dismissed.