

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-307-MA of 2013 (O&M)
Date of decision: September 23, 2015

Raj Kumar @ Raju

...Applicant

Versus

Bhim Sain Ahuja

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.K.Dhiman, Advocate and
Mr.Naveen Daryal, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Raj Kumar @ Raju has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Bhim Sain Ahuja, challenging the judgment dated 22.2.2013 passed by learned Addl. Sessions Judge, Kurukshetra, whereby the complaint filed by the applicant was dismissed and accused-respondent was acquitted.

It is stated in the application that accompanying appeal is likely to succeed. It is also stated that the appellant has taken specific and cogent grounds to seek setting aside of the judgment of acquittal dated 22.02.2013 passed by learned Addl. Sessions Judge, Kurukshetra.

As per the record, the complainant Raj Kumar @ Raju filed

the complaint against accused-respondent Bhim Sain Ahuja under Sections 3(viii)(ix)(x) of the SC/ST Act. As per complainant's version, he is "chamar" by caste, whereas, accused is "Khatri" by caste and belongs to Swaran caste. The accused was running a juice corner in the name and style of "Sangam Juice Corner" on 3rd Gate, Kurukshetra University, Kurukshetra and the complainant was servant on the juice corner of accused for the last 10-12 years. The accused moved an application regarding theft against the complainant and his brother and on investigation, the said complaint was found false. Thereafter, the accused moved an application to the S.P. Kurukshetra on which FIR No.9 dated 10.01.2007 under Section 457 and 381 IPC was registered. The complainant filed anticipatory bail and in reply to that application, the State stated that the said FIR was found false during investigation and the same has been sent for cancellation and the bail application was withdrawn. During investigation, the police of CIA Staff took the complainant into custody on 09.02.2007 and tortured him badly. It is also stated that false application was given. On 03.04.2007, when the complainant was going on the road in front of the shop of the accused then the accused hurled the defamatory language against the caste of complainant which reads as under:-

'Sale ded chamar, Bahan Chod, too ab bhi yahin ghoom raha hai. Tuje kaha tha gam chhod de nahi to tuje jan se mar denge'

It is further the case of the complainant that so many persons gathered at the spot.

On the basis of the evidence on record, learned Addl.

Sessions Judge, Kurukshetra, acquitted the accused-respondent vide impugned judgment dated 22.02.2013.

After hearing learned counsel for the applicant and after going through the record, especially the impugned judgment I find that the findings given by learned Addl. Sessions Judge, Kurukshetra vide judgment dated 22.02.2013, are correct as per evidence and law. In no way, the reasonings can be held as perverse or against the evidence. Nothing has been pointed out as to which evidence has been misread or which material evidence has not been considered by the court below.

Learned Addl. Sessions Judge, Kurukshetra, firstly held that there is motive for filing this complaint and this complaint is counter-blast to the FIR got registered by the accused of this case for theft of about ₹4.5 lacs. Secondly, the Court held that though it is the case of the complainant himself that so many people gathered at the spot, but none of the independent witness has been examined. PW-1 Raj Kumar, complainant and PW-2 Sunny are real brothers and PW-4 Ranjit Singh is brother-in-law of PW-1 and these are interested witnesses. The Court further held that PW-1 and PW-2 nowhere stated that the accused does not belong to Schedule Caste or belong to Khatri caste etc. in the evidence, which the Court says is necessary. The Court below also held that present complainant remained as employee of the accused for 10-12 years, but in cross-examination he has not stated the names of the neighbours etc., which he supposed to know. The Court also discussed the report

under Section 202 Cr.P.C. given by the police in this complaint case saying that it is a false case.

From the above, I find that judgment dated 22.02.2013 passed by learned Addl. Sessions Judge, Kurukshetra, is correct, as per evidence and law.

Keeping in view above facts and circumstances, I find that no ground is made out to grant permission for leave to appeal and therefore, the present application stands dismissed.

September 23, 2015
Vgulati

(INDERJIT SINGH)
JUDGE