

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

CRM-A No.672-MA of 2013 (O&M)
Date of decision: 30.04.2015

Narinder Kumar

-----Applicant (s)

V/s

Rajvir Singh & others

-----Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Satbir Rathore, Advocate
for the applicant(s).

HARI PAL VERMA, J (Oral).

This is an application filed under Section 378(4) CrPC seeking permission to grant special leave to appeal against the judgment of acquittal dated 16.3.2012 passed by Judicial Magistrate Ist Class, Ambala, whereby the accused-respondents have been acquitted of the charges framed against them under Sections 148, 149, 323, 341, 427, 452, 506 IPC read with Section 120-B IPC.

Briefly stated, that facts of the case are that the complainant-applicant filed a complaint under Sections 148, 149, 323, 341, 427, 452, 506 IPC read with Section 120-B IPC and

sought prosecution of the accused for the aforesaid offences. In the complaint, the complainant-applicant has alleged that his mother had purchased land measuring 64 kanals 9 marlas situated in Village Panjail, Tehsil and District Ambala from one Baljeet Singh in a restricted auction, which took place on 23.5.1995. The said auction was confirmed by the Settlement Commissioner on 14.6.1995. As per the terms of the auction, said Baljeet Singh was restricted from executing the transfer of documents in favour of any other person for 10 years from the date of purchase. In May 2002, when said Baljeet Singh was in need of money and to meet out this urgency, he approached the family of the complainant-applicant and offered to sell his land measuring 64 kanals 9 marlas, to which the complainant-applicant's family agreed to purchase. Accused Baljeet Singh appointed accused Madan Singh as his attorney and accordingly, Madan Singh entered into an agreement of sale of land in question on behalf of said Baljeet Singh @ Rs.1,50,000/- per acre. Madan Singh received Rs.8 lacs in cash as earnest money and also executed an agreement of Pattanama/lease deed and received Rs.2,40,000/- as lease amount. He executed a special power of attorney in favour of mother of the complainant-applicant. Thus, Madan Singh has received a total sum of Rs.10,40,000/- from the complainant's family and since then, the complainant and his family members are cultivating the land as absolute owners. The complainant's mother, accordingly, applied

for correction of entries regarding physical possession of the said land before the competent authority. After getting possession, the complainant sowed sugarcane crops in the land in question. In the complaint, it was alleged that on 1.4.2001, when the complainant along with Prem Singh son of Umrao Singh and Munni Lal son of Leela Ram were present in their fields for irrigating the sugarcane crops, at about 4.30/5.00 p.m., all the accused-respondents along with 140/150 other mischievous persons armed with deadly weapons entered the fields of the complainant-applicant, whereas the accused Rajbir Singh and Ranbir Singh had exhorted that the complainant be taught a lesson for purchasing the land. The other accused Mewa Singh, Raj Kumar, Baljeet Singh and Madan Singh were driving tractors armed with *gandas*. Two other tractors were being driven by two other persons whose names were not known to the complainant-applicant. Accused Risal Singh came in the field of the complainant-applicant by travelling in his car and raised *lalkara* that they would take the possession. On hearing the *lalkara* and seeing the crowd, the complainant and his companions ran away towards the tubewell *kotha* and got themselves locked inside the tubewell *kotha*. The accused Jagjit, Pardeep and Randeep having rifles in their hands along with other mischievous persons attacked the complainant-applicant and broke open the door of the said tubewell *kotha*. They forcibly entered in the tubewell *kotha* along with their respective weapons. Accused Jagjit Singh

gave a blow of butt of his rifle to the complainant-applicant on his abdomen and also slapped him. Finding him in a troubled situation, the complainant and his companions requested the accused to leave them and assured them that they will never cultivate the land. It is on this assurance, the accused allowed them to leave the fields. All the accused gave filthy abuses to the complainant-applicant when they were leaving the field. They also threatened the complainant that if he tried to cultivate the land in question, his entire family will be eliminated. The accused persons, who were in six different tractors, started ploughing the standing sugarcane crops of the complainant and destroyed the crop worth Rs.3 lacs. The occurrence was witnessed by complainant's parents from a distance. Though the complainant made a complaint to the police station Barara to lodge a report, but instead of taking action against the accused, the police has lodged DDR No.15 dated 4.1.2001 and assured the complainant that they would investigate the matter and take action.

The complainant-applicant produced the preliminary evidence and examined himself as CW-1, Prem Singh as CW-2, Munni Lal as CW-3 and Saroj Devi as CW-4.

On the basis of evidence led by the complainant, the accused were ordered to be summoned to face trial for commission of offences under Sections 148, 149, 323, 341, 427, 452, 506 read with Section 120-B IPC by Judicial Magistrate Ist Class, Ambala Cantt. On the basis of pre-charge evidence, the

accused persons were ordered to be chargesheeted for commission of offences under Sections 148, 323, 341, 427, 452, 506 read with Section 149 IPC. In post-charge evidence, the defence further cross-examined the witnesses Narinder and Saroj Devi.

Statements of accused under Section 313 CrPC were recorded and all the incriminating circumstances appearing in the prosecution evidence were put to them, to which, they pleaded their innocence and false implication.

Learned trial Court vide order dated 16.3.2012, found that the complainant was not in possession of the land in question and acquitted the respondents-accused of the charges framed against them. The relevant observations of the trial Court read as under:-

“25. Now, turning to the case in hand, the prosecution has totally failed to prove that complainant party was found in possession of the land in dispute on the day of occurrence. Neither any document, by dint of which, accused Baljeet Singh appointed the accused Madan Singh as his attorney, nor any document, by virtue of which, real mother of the complainant, who appeared as prosecution witness namely Saroj, was given any document of title for the land in dispute, has been produced on the record. The case of the prosecution that documents of title were stolen by accused Baljeet Singh and Madan Singh also brushed aside in the wake of the judgment of Id. JMIC, Kurukshetra vide Ex.D1. The evidence in this respect adduced by the prosecution in the present

case is not only a frail nature, but also is lacking in probability and does not inspire the confidence.

26. Further, the delay in filing of the present complaint has not been well explained by the prosecution. As per the alleged version of the prosecution occurrence took place on 4.1.2001. On perusal of the file, it is crystal clear that present complaint was instituted by the complainant on 1.7.2003. In order to explain its delay in filing of the complaint, the prosecution made an attempt to prove a DDR entry vide Mark C10.

27. I am of the view that mere registration of the DDR entry is not enough to come on the conclusion that occurrence as alleged by the prosecution took place. It was stated by witness Mohinder Singh that ASI Janak Singh was deputed to verify the occurrence. Now, it was upon the prosecution to prove that the police party found the version of the complainant as correct after making the verification on the place of occurrence. I am of the view that if the police did not take any action against the accused for committed of alleged occurrence, then what was hitch for the complainant or his mother to file the complaint in a prompt manner.”

Learned counsel for the applicant-complainant has argued that the petitioner was in possession of the land in dispute and the applicant has produced enough evidence to support his case, but the same was not duly appreciated by the trial Court. It is only on the basis of preliminary evidence, the accused were summoned vide order dated 12.4.2004 and in compliance of the

summoning order, the accused appeared before the trial Court. The complainant has lead the pre-charge evidence and therefore, the charges were framed against the accused, but still, the trial Court acquitted the accused by observing that the complainant has failed to establish from any documentary evidence that he was in possession of the land in dispute. He further argued that the acquittal of the respondents-accused on the ground that prosecution has failed to prove the possession and title over the land in dispute, is contrary to the evidence on record. The trial Court has failed to appreciate the fact that the GPA and agreement to sell in favour of the mother of the complainant and GPA in favour of Madan Singh by Baljeet Singh are part of record and these documents were duly tendered into evidence during the course of preliminary evidence as Ex.C1 to C11. He further argued that the trial Court has wrongly observed that there is an unexplained delay in institution of the complaint, especially in view of the fact that the complainant has proved on record that a DDR was got registered by him and repeatedly pursued the complaint, but when no justice was imparted to him, he filed the present complaint. Therefore, the law of limitation is not applicable to the present case.

I have heard learned counsel for the applicant-complainant.

The very basis of the case of the applicant-complainant is the possession of the land in dispute. It will be

relevant to reproduce Para 23 of the trial Court judgment, which reads thus:-

23. Now, on seeing the entire evidence of the prosecution, it was the bounden duty of the prosecution to prove that an agreement to sell, a lease agreement and power of attorney were executed by accused Baljeet Singh through his power of attorney i.e. accused Madan Singh in favour of Saroj. Then, it is incumbent upon the prosecution to prove that the complainant party was possessing the land in dispute. Thereafter, it was the bounden duty of the prosecution to prove that the accused persons entered the land in dispute.”

Considering the fact that the complainant has failed to establish possession over the land in question, the allegation that the accused trespassed into the property of the complainant, cannot be accepted. There is nothing wrong to say that the criminal cases are not to be decided on the basis of preponderance and each circumstance of the case, as pleaded by the prosecution is required to be established by leading cogent evidence. Apart from the fact that the complainant has failed to prove that he was in possession of the land in dispute on the date of occurrence, no such document has been placed on record wherein the accused Baljeet Singh appointed Madan Singh as his attorney. Similarly, no other document, by virtue of which the real mother of the complainant, who appeared as prosecution witness namely Saroj, was given any document of title for the land in

dispute, has been placed on record. The plea that the documents of title were stolen by accused Baljeet Singh and Madan Singh is also without any evidence. Furthermore, even the inordinate delay in filing the complaint has not been explained properly. Admittedly, the occurrence took place on 4.1.2001, whereas the present complaint was instituted on 1.7.2003. In order to prove the delay, the prosecution has made an attempt to prove the DDR entry vide Mark C-10.

No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the applicant.

In this view of the matter, no interference is warranted in the impugned order. Accordingly, finding no merit in the contention of the learned counsel for the applicant, the prayer made in the present application under Section 378 (4) Cr.P.C. for special leave to appeal is declined. The application is dismissed.

Since the application for leave to appeal has been dismissed on merits, no further order is required to be passed in the application under section 5 of the Limitation Act for condonation of delay in filing appeal.

April 30, 2015
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(HARI PAL VERMA)
JUDGE