

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.23902 of 2015
and
Criminal Misc. No.A-1252-MA of 2015

.....

Date of decision:17.9.2015

Jal Devi

...Applicant

v.

State of Punjab and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Digvijay Nagpal, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.23902 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 65 days in filing the criminal miscellaneous application for grant of leave to appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-1252-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C against State of Punjab, Dinesh Kumar and others-respondents seeking grant of leave to file appeal against the judgment of acquittal dated 9.3.2015 passed by learned

Judicial Magistrate Ist Class, Malout.

It is mainly stated in the application that the accompanying appeal is being filed against the judgment dated 9.3.2015 passed by learned Judicial Magistrate Ist Class, Malout, which is likely to succeed on the grounds mentioned therein. It is further stated that the order passed by the learned trial Court is against the law and facts proved on the file and thus, caused a grave miscarriage and injustice. Therefore, it is prayed that the leave to file appeal be granted.

From the record, I find that Jal Devi-complainant has filed this complaint against Dinesh Kumar, Sukh Devi, Surjit Kumar, Nakita Devi, Sangita Rani and Geeta Rani for the offences under Sections 323, 354 read with Section 34 IPC. It is stated in the complaint that she along with her family is residing at the aforesaid address. On 30.6.2008 at about 10.00 a.m., Ramesh Kumar, husband of the complainant, who is engaged in manual labour, and had gone to his work and her children were also not present at her house, at that point of time, Dinesh Kumar accused No.1, Sukh Devi wife of Dinesh Kumar accused No.2 armed with handle of spade, accused No.3 Surjit Kumar armed with iron rod and Nakita Devi, Sangita Rani and Geeta Rani armed with sticks, forcibly entered into the house of the complainant and asked her to leave the house. Then accused No.2 Sukh Devi asked with anger that they have to forcibly occupy the house and all the accused persons started throwing the utensils of the complainant out of their house. On interruption, accused Dinesh Kumar touched the breast of the complainant with mala fide intention and caught

hold of her, but the complainant saved herself from his clutches. Thereafter, accused Surjit Kumar became angry and gave a blow of his iron rod on the left shoulder of the complainant and gave another blow towards the elbow of the complainant and the remaining accused also inflicted blows with their respective 'Dangs' on the back and joint of the complainant. Thereafter, the complainant raised hue and cry and, in the meantime, Brij Lal along with children of the complainant came at the spot and on hearing the noise, Mohinder Singh and Anil Kumar also came at the spot. All the accused persons fled away from the spot along with their respective weapons.

The complainant examined Dr. Gurcharan Singh, Medical Officer, PHC Alamwala as CW-1. Jal Devi-complainant herself stepped into witness box as CW-2 and thereafter she examined Anil Kumar as CW-3, Brij Lal as CW-4 and closed pre-charge evidence.

The learned Judicial Magistrate Ist Class, after appreciating the evidence acquitted the accused vide impugned judgment dated 9.3.2015.

From the perusal of the record especially the judgment passed by the learned Judicial Magistrate 1st Class, I find that as per the complainant the occurrence took place on 30.6.2008 and the complaint was filed on 21.5.2010 that is almost about two years after the occurrence. This delay of two years, as discussed by the learned Judicial Magistrate Ist Class, has not been explained. There is no cogent evidence on record to explain this long delay of two years. Secondly, as per MLR of Jal Devi only three injuries were found, which are mere abrasions and complain of pain only.

So, this MLR also does not corroborate oral evidence where the complainant is alleging so many injuries with the 'Dangs' etc. Further, I find that when the complaint was filed, accused Sangita Rani and Geeta Rani daughters of Dinesh Kumar were shown of the age of 18 years and 19 years, which means that at the time of occurrence they were of the age of 16 and 17 years respectively. No father will commit the offence under Section 354 IPC in the presence of his young daughters and wife, son and daughter-in-law etc. The age of Dinesh Kumar has been shown as 68 years.

In view of the evidence on record and the findings given by the Court below and especially the delay of two years, which remained unexplained, I find that the findings given by the Court below are correct and as per law and do not require any interference from this Court.

Therefore, I do not find any ground to grant leave to file appeal. Hence, finding no merit in the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal, the same is dismissed.

September 17, 2015.

(Inderjit Singh)
Judge

hsp