

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc.No.A-1302-MA of 2015 (O&M)

Date of decision: 29th September, 2015

Gulshan Valecha

...Applicant

Versus

Raj Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. J.S.Thind, Advocate,
for the applicant.

INDERJIT SINGH, J.

Applicant Gulshan Valecha has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to file appeal against respondents Raj Kumar, Rajesh, Sunder, Sunil, Krishan, Deepu and Sunny, challenging the impugned judgment dated 19.05.2015, passed by the learned Judicial Magistrate Ist Class, Hisar, whereby the complaint filed by him was dismissed and the accused-respondents were acquitted.

It is stated in the application that the accompanying appeal is likely to succeed. It is also stated that the learned Court below vide judgment dated 19.05.2015, has acquitted the respondents-accused (hereinreferred as 'the accused'). It is prayed that the leave to file appeal be granted against the said judgment.

As per record, Gulshan applicant-complainant (hereinreferred as 'the complainant') filed a complaint against Raj Kumar etc. under Sections 392, 394, 323, 324, 452, 506, 148 and 149 IPC. As per complainant's version, he alongwith his father runs

Hotel Valecha Bhojnalya, Railway Road, Hisar. Accused Raj Kumar is uncle of the complainant and other accused are his in-laws. Accused kept evil eye on the hotel of complainant. On 11.12.2011, at about 11:45 p.m., the complainant was collecting the sale amount and the shutter of the hotel was partly closed. At that time, his father was sleeping inside the hotel; his younger brother was checking the vegetables and the employees of the hotel had gone to sleep in the room on the upper portion of the hotel. The accused persons trespassed into the said hotel through gate and threatened the complainant and when he protested, they started beating him with fist blows and slaps. Accused Krishan inflicted knife blow to Anil, brother of complainant. When the complainant and his brother Anil raised alarm, their father came on the spot and accused persons also gave beatings to him. Accused Sunil inflicted hockey blow to the father of complainant which hit on his right thigh. Accused persons also looted an amount of Rs.32,200/- lying in 'galla' (money box). It is also stated in the complaint that out of the said amount Rs.30,000/- had been borrowed by the complainant and Rs.2200/- were the amount of hotel. The matter was reported to the police and FIR was registered but the police did not take any action.

The learned Judicial Magistrate Ist Class, Hisar, after going through the evidence on record, acquitted the accused of the charges framed against them.

Aggrieved against the said judgment, the applicant has filed this application for grant of leave to file appeal.

I have heard learned counsel for the applicant and have

gone through the record.

Perusal of the record especially the impugned judgment nowhere shows that the reasoning given by the learned Magistrate are perverse. At the time of arguments, nothing has been pointed out as to which evidence has been misread and which material evidence has not been considered by the learned Court below. As per the cancellation report, submitted by the police in the Court, the the version of the complainant was found as false. As per record, the injury on the person of complainant was only shown as swelling with tenderness on the posterior aspect of base of left little finger. The injury on the person of Sadanand, father of complainant, is stated to be only complaint of pain on the anterior aspect of lower half of right finger and no external injury was seen. On the person of Anil, brother of complainant, incised wound was found on right inguinal region of abdomen. During investigation by the police, the doctor opined that injury can be self sustained and also can be given by friendly hand. Regarding injury No.1 on the person of Anil, which is stated to be with knife, there was no corresponding cut found in the shirt. The police found this version false and even proceedings under Section 182 IPC has been started against the complainant. During investigation, the police, in view of the phone call details, also found that the presence of accused persons cannot be established at the spot. The learned Court below also discussed the statements of three material witnesses i.e. Complainant Gulshan Valecha (PW1), Sadanand (PW2) and Anil (PW6) and found that they are discrepant of the main point regarding taking away of Rs.32,200/-. PW1

Gulshan Valecha has nowhere stated the alleged snatching of Rs.32,200/- in his chief examination; PW2 Sada Nand has stated that Rs.32000/- were snatched from complainant Gulshan and PW6 Anil, brother of complainant, has stated that Rs.32,000/- were taken away from the money box (galla) lying in the hotel. No independent witness has been examined in the present case. Perusal of the impugned judgment shows that the findings returned by the learned Court below are correct and as per evidence and law which cannot be held as perverse. Therefore, no ground for grant of leave to file appeal is made out.

Accordingly, the instant application stands dismissed.

29th September, 2015
mamta

(INDERJIT SINGH)
JUDGE