

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

**CRM-A-1653-MA-2014 (O&M)
Date of decision: 05.02.2015.**

Ram Dhan

.....Applicant

Versus

Jai Kumar @ Monu

.....Respondent

**CORAM:- HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MR. JUSTICE DARSHAN SINGH**

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

Present: Mr.Salil Bali, Advocate for the applicant.

DARSHAN SINGH J.

CRM-33188-2014

There is delay of six days in filing the application under Section 378(4) Code of Criminal Procedure, 1973 (hereinafter called 'Cr.P.C.').

2. It is contended that due to insufficient funds, the applicant could not contact his counsel. Now after arranging funds from the relatives and friends, he has filed the accompanied application before this Court. Therefore, the delay of six days occurred.

3. In view of the grounds mentioned in the application, the delay has been satisfactory explained, hence the application is allowed.

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4. The applicant has filed this application under Section 378 (4) Cr.P.C. for grant of leave to file the appeal against the judgment of acquittal dated 09.06.2014 recorded by the learned Judicial Magistrate First Class, Rohtak.

5. The applicant has filed a private complaint against respondent Jai Kumar alias Monu, alleging therein that on the night intervening 1-2 January, 2005, at about 12:30 a.m., accused broke open the lock of the factory and entered the house of the applicant-complainant with intent to commit theft. He had tried to break open the lock of almirah lying in the room. On hearing the noise, wife of the applicant-complainant woke up and raised the noise '*Chor*'- '*Chor*'. The respondent-accused tried to run away with a tape-recorder of the complainant but he was chased by the son of the complainant namely Bijender and was caught hold by the complainant. He tried to escape, in the meanwhile, he inflicted injuries to the complainant. Thereafter, the complainant telephonically informed the police. At about 01:00 a.m., the police officials reached at the spot and Daily Diary Report was recorded in the Police Post, Indra Colony, Rohtak. The complainant was got medico legally examined from General Hospital, Rohtak on 02.01.2005. The formal FIR was registered against the accused. However, as the relatives of the accused were strong-headed persons, the police lodged a false case against the complainant and his family members. In the FIR lodged by the complainant, a cancellation report was filed and no action

was taken by the police. So, the complainant filed the private complaint.

6. Respondent Jai Kumar alias Monu was summoned to face the trial for the offences punishable under Sections 323, 380, 457 and 511 Indian Penal Code (hereinafter called 'IPC') vide order dated 22nd April, 2006.

7. The respondent was charge sheeted for the offences punishable under Sections 457, 380, 323 and 511 IPC, to which he pleaded not guilty.

8. The applicant-complainant himself appeared as CW1, his son Bijender appeared as CW2, his wife Lado Devi appeared as CW3, Constable Mukesh Kumar was examined as CW4 and Surender was examined as CW5. The complainant also tendered in evidence the certified copy of FIR No.12 dated 06.01.2005 under Sections 380, 457, 511 IPC, P.S. City, Rohtak and the copy of medico legal report.

9. The respondent was examined under Section 313 Cr.P.C. He denied all the allegations and pleaded innocence as well as false implication. The respondent also produced various documents in his defence.

10. We have heard the submissions made by learned counsel for the applicant.

11. Learned counsel for the applicant contended that this fact is not disputed that the respondent was caught by the police from the house of the applicant. He had entered therein in order to commit theft. He was found breaking open the lock of the almirah and when the wife of

the applicant woke up, he tried to run away with the tape-recorder. He was apprehended at the spot and injuries were caused to him in the self-defence. He contended that all the allegations mentioned in the complaint are fully established from the testimonies of the complainant-applicant, his son and wife, who are the witnesses of the occurrence. The police has wrongly cancelled the case registered by the applicant, rather filed a false case against the applicant. Thus, he contended that the judgment of acquittal recorded by the learned Magistrate, suffers from material illegality and has resulted in miscarriage of justice.

12. We have duly considered the aforesaid contentions.

13. It is not disputed that the applicant is an employee of the Haryana Police, whereas the respondent was a student at the time of the occurrence. He has got registered the case bearing FIR No.12 dated 06.05.2005 under Sections 380, 457, 511 IPC, P.S. City Rohtak against the respondent with regard to this very incident. It is not disputed that after investigation, the cancellation report has been filed by the police in that case and, thereafter, the applicant has filed the private complaint. It is also an admitted fact that the respondent was the son of the neighbour of the complainant, so he was already known to the complainant, but in the complaint, this fact that the respondent happens to be their neighbour, has not been mentioned. If the respondent would had entered the house of the complainant with intention to commit theft and was apprehend by the complainant and his family members, the natural reaction of the complainant, being neighbour, would have been to complain to the

parents of the respondent. But it has been observed by the learned trial Court in the impugned judgment that the complainant did not open the gate of his house even on asking of the family members of the respondent and other neighbours till the police arrived at the spot.

14. From the defence evidence adduced by the respondent, it comes out that a case bearing FIR No.14 dated 07.01.2005 under Sections 323, 324, 342, 506, 326, 34 IPC P.S. City Rohtak has been registered against the applicant and his family members. The applicant has placed the copy of the judgment dated 09.06.2014 in that case as Annexure A-1, which shows that the said case was registered against the present applicant, his son Bijender and wife Lado on the statement of respondent Jai Kumar about this very occurrence and it was found that respondent Jai Kumar had suffered number of injuries. He had suffered multiple fractures and that case has resulted in conviction of the applicant, his son and wife.

15. It further comes out from the impugned judgment that the applicant-complainant has not produced any tape-recorder, allegedly being taken away by the respondent-accused and the broken lock of the factory. Thus, the story put forwarded by the applicant-complainant regarding the entry of respondent-accused in his house with intention to commit theft is extremely doubtful.

16. In our considered view, learned trial Court has rightly evaluated the evidence adduced by the parties and had come to the correct findings that the applicant has not been able to establish the charges against the respondent beyond shadow of reasonable doubt.

17. Therefore, finding no merits in the present appeal, leave sought for by the applicant-complainant is hereby declined.

18. Thus, the application filed by the complainant under Section 378 (4) Cr.P.C. is hereby dismissed.

(M. JEYAPPAUL)
JUDGE

05.02.2015
sunil yadav

(DARSHAN SINGH)
JUDGE