

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc.No.A-383-MA of 2014 (O&M)

Date of decision: 29th September, 2015

Sukhwinder Kaur

...Applicant

Versus

Niranjan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Robin Dutt, Advocate,
for the applicant.

INDERJIT SINGH, J.

Applicant Sukhwinder Kaur has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to file appeal against respondents Niranjan Singh, Mahindero and Sarwan Kaur, challenging the impugned judgment dated 05.12.2013, passed by the learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, whereby the complaint filed by her was dismissed and accused-respondents were acquitted.

It is mainly stated in the application that in the complaint filed by applicant, the accused persons were acquitted vide impugned judgment. It is also stated that the accompanying appeal has been filed which is likely to succeed. It is prayed that leave be granted to the applicant to file appeal.

As per record, Sukhwinder Kaur applicant-complaint (hereinreferred as 'the complainant') filed a complaint under Sections 323, 452, 504, 506, 34 IPC against Niranjan Singh, Mahindero and Sarwan Kaur respondents-accused (hereinreferred as 'the accused').

As per complainant's version, she, her sister Parvinder Kaur and her widow mother were residing together and the accused were their neighbours. The accused were having an evil eye on the residential house of the mother of the complainant and they want to grab it. On 09.10.2007, the accused trespassed into the house of complainant's mother and caused injuries to complainant, her sister and mother. The complaint was given to police regarding this incident but no action was taken. On 02.12.2007, when the mother of the complainant was alone at the house, the accused again trespassed into her house and caused her injuries but again, police did not take any action. Mother of the complainant filed a private complaint against the accused and subsequently, accused Nirnajan Singh, Sarwan Kaur and Mohinder Kaur appeared in that case on 07.04.2008 and they were granted bail by the learned Court below and in the Court compound, the accused also threatened the complainant. On the same day, in the evening at about 06:00 p.m., when mother of the complainant reached back to her house, the complainant and her sister Parvinder were present there and complainant was milking the buffalo. At that time, the accused with their common intention entered the house of complainant forcibly by raising 'lalkara'. Thereafter, accused Nirnajan Singh, inflicted a danda blow on the head of complainant due to which she fell down and accused Nos.2 and 3 Mahindero and Sarwan Kaur inflicted kick blows and dragged her by her hair. When the sister and mother of complainant tried to intervene, the accused also inflicted slap and fist blow to them. In the meantime, when one Gurdev Singh, who was

passing by the side of the house of complainant party, came there, the accused left the spot. Thereafter, on 09.04.2008, the complainant went to civil hospital, Jagadhri and got herself medico legally examined.

The learned Court below, on the basis of evidence, acquitted the accused of the charges framed against them vide judgment dated 05.12.2013.

I have heard learned counsel for the applicant and have gone through the record.

After hearing the learned counsel for the applicant and especially after going through the impugned judgment, I find that first of all CW2 Gurdev Singh is maternal uncle of complainant but this fact has not been stated in the complaint. This witness, in his statement recorded before the Court, has deposed that he has seen the accused, beating the complainant with 'danda' and also threatened her. CW3 Bhag Kaur is mother of the complainant and CW4 Sukhwinder Kaur is complainant herself. As per medico legal report of complainant Sukhwinder Kaur (CW1), there is only one injury i.e. swelling and tenderness in occipital region of scalp. The second injury was with alleged history of assault in abdomen but no injury mark was seen. The version of the complainant and other witnesses that when CW2 Gurdev Singh reached at the spot, accused were beating the complainant with 'danda' is not supported and corroborated by medical evidence. There is only one injury on the person of complainant which is stated to be swelling and tenderness. Secondly, I find that the occurrence took place on

07.04.2008 at 06:00 p.m. Even there was any swelling etc. then firstly the complainant should go to hospital for treatment and to get herself medico legally examined. There is no explanation as to why she had not gone to hospital immediately and why she had gone on 09.04.2008 after about two days. Further, from the evidence, recorded before the learned Court below, I find that the complainant has not attributed any specific injury to anybody. She has simply stated that the accused had beaten her. It is also stated that they also beaten Gurdev Singh, which is not the case of the complainant. Otherwise also, Gurdev Singh (CW2) was not medico legally examined. Furthermore, CW4 Sukhwinder Kaur complainant, in her statement recorded before the learned Court below, has stated that accused Niranjan was armed with iron rod but in the complaint there is no such version. Rather, it is stated that accused were armed with 'dandas'. If three persons armed with 'dandas' and iron rod will enter into the house of complainant and will cause injuries then such type of injury will not occur. Rather, they will cause serious injuries to the complainant party. Furthermore, as per version of CW2 Gurdev Singh, 10-12 person were present at the time of incident which is not stated so in the complaint. This fact also creates doubt in the prosecution version. Complainant Sukhwinder Kaur, in cross examination, has stated that she cannot say whether any complaint has been filed by her mother and thus denied the very basis of her complaint. The learned Court below, after discussing this fact, acquitted the accused of the charges framed against them. 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. The findings returned by the learned Court below are correct and as per evidence and law which cannot be held as perverse and do not require any interference by this Court. Therefore, the findings returned by the learned Court below are correct.

From the aforesaid discussion, no ground for grant of leave to file appeal is made out. Therefore, the instant application stands dismissed.

29th September, 2015
mamta

(INDERJIT SINGH)
JUDGE