

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.10216 of 2015
and
Criminal Misc. No.A-516-MA of 2015

.....

Date of decision:8.9.2015

Maman

...Applicant

v.

Afsar and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Parminder Singh, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.10216 of 2015:

The criminal miscellaneous application has been filed seeking condonation of 101 days delay in filing the appeal.

For the reasons mentioned in the criminal miscellaneous application, the delay of 101 days in filing the criminal miscellaneous application for leave to appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-516-MA of 2015:

This criminal miscellaneous application has been filed under Section 378(4) Cr.P.C. against Afsar and others-respondents praying for the

grant of leave to appeal against the judgment of acquittal dated 1.10.2014 passed by learned Judicial Magistrate Ist Class, Karnal.

It is stated in the application that the applicant is filing the accompanying appeal, which is likely to succeed on the grounds taken therein. It is further stated that the learned trial Court has given the benefit of doubt to the respondents/accused just on the ground that the prosecution has not been able to bring home the guilt of the accused beyond shadow of reasonable doubt. It has been prayed that the present application may be allowed and the leave to appeal may be granted against the order of acquittal.

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

The brief facts of the case are that Maman-complainant filed the complaint against Afsar, Arif, Asif, Juhar Hassan and Rakiba for the offences under Sections 323, 427, 447, 504, 506 and 34 IPC by stating that the complainant is the owner in cultivating possession of land measuring 39 Kanals 19 Marlas. The accused have their land adjoining to the land of the complainant. On 7.12.2010, the accused along with 8-9 gunda type persons came to the land in question and destroyed the wheat crop of the complainant on some portion of the land. They also encroached upon the said land illegally and forcibly. They rather threatened the complainant that if he will try to get the said land vacated, they will dispossess him of the entire land. On 8.12.2010, the complainant moved an application before the Tehsildar, Gharaunda seeking demarcation of his land. On 6.1.2011,

demarcation was conducted and demarcation report was prepared showing encroachment upon the land of the complainant by the respondents-accused of the area of 13 feet wide and 198 feet in length. Thereafter, the complainant filed a civil suit titled “Maman Versus Afsar and others”, wherein status quo was granted in favour of the complainant. He also moved a complaint dated 18.1.2011 to the SHO concerned, but no action was taken against the accused persons. It is also the case of the complainant that on 9.1.2011 at about 4.00 p.m., when the complainant along with his son Pala Ram was working in the field, all the accused persons armed with deadly weapons came to the fields of the complainant and raised a ‘Lalkara’ and started abusing the complainant in the name of his brother and sister. Accused Arif caught hold of the complainant and his son and gave fist and ‘Dang’ blows to them.

The learned Judicial Magistrate Ist Class, Karnal, vide judgment dated 1.10.2014 after appreciating the evidence acquitted the accused of the charges framed against them. As regards the offence under Section 427 IPC, it is held by the trial Court that besides their self-serving statements of the complainant and his son, there is no cogent evidence on record to prove that any crop of the complainant was destroyed by the accused. As regards the offence of criminal trespass, the complainant has relied upon the demarcation report. However, the Naib Tehsildar (CW-3) fairly admitted in his cross-examination that while carrying out the said demarcation, no notice was given to the opposite party. He also admitted that no ‘Pucca’ point (Burzi survey) was installed as the land was subject to

river action. Therefore, the learned Judicial Magistrate Ist Class has not relied upon the demarcation report which has not been carried out as per law. Further, the trial Court has not placed any reliance on the judgment and decree of the Civil Court. The trial Court also found the version unnatural. Further, as per the allegations of the complainant, had the accused who were armed with deadly weapons and were five persons, they would have given severe injuries to the complainant and his son, but no such injuries had been shown on record. They have not been medico-legally examined nor any doctor has been examined. The findings given by the learned Judicial Magistrate Ist Class in the judgment dated 1.10.2014 are as per evidence on record. In no way, it can be held that these findings are perverse or some material evidence has been misread or some material evidence has not been considered by the trial Court. The findings given by the learned Judicial Magistrate Ist Class, Karnal are as per evidence and law.

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

September 8, 2015.

(Inderjit Singh)
Judge

hsp