

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

**Criminal Misc. No. A-527-MA of 2015
Date of decision: 07.09.2015**

Santosh

..Applicant

Versus

Ashok Kumar and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes/No**
- 2. To be referred to reporters or not? Yes/No**
- 3. Whether the judgment should be reported in the Digest? Yes/No**

Present: Mr. Jitender Dhanda, Advocate
for the applicant.

Daya Chaudhary, J.

The present application has been filed under Section 378(4) of the Code of Criminal Procedure seeking leave to appeal against the judgment of acquittal dated 09.01.2015 passed by the Judicial Magistrate Ist Class, Hisar (hereinafter called 'the trial Court').

Briefly, the facts of the case are that the complainant, who was Ex-sarpanch of village Frasi, was residing at Vakil Colony, Hisar at the time of the alleged incident. On 30.03.2010 at about 8:30 pm when she was all alone in her house, accused No.1 and 2 accompanied by 5/6 other persons in police uniforms forcefully entered into the house of the complainant and manhandled her. An application was moved by her to Superintendent of Police, Hisar on

02.04.2010 for taking action against the accused persons but no action was taken thereupon. Thereafter, again on 04.04.2010 at about 7:30 pm accused persons accompanied by 5/6 other persons, who were in police uniforms entered into the house of the complainant. On that day, complainant, her husband-Jagdish, her daughter-Poonam and Ram Kishan were present in the house. Accused threatened the complainant to give an amount of ₹10,000/- on account of compromise effected in case registered under Section 377 IPC, failing which, her daughter-Poonam will be kidnapped by him but by the intervention of her husband-Jagdish and Ram Kishan, the accused persons went away. Thereafter, she filed a complaint regarding this incident to the Police but no action was taken even on that complaint. Thereafter, the complaint was filed in the Court of Illaqa Magistrate on 16.04.2010 whereupon accused-respondents faced trial and ultimately, they were acquitted of the charge by the trial Court vide judgment dated 09.01.2015.

The aforesaid judgment of acquittal passed by the trial Court on 09.01.2015 has been challenged by filing the present application.

Learned counsel for the applicant submits that it is a case of misappreciation and misreading of the facts and evidence as the evidence produced by the prosecution was not appreciated by the trial Court. The case of the prosecution was supported by all the prosecution witnesses but still accused have been acquitted of the

charge by the trial Court. Learned counsel also submits that the judgment of acquittal is liable to be set-aside as it is not based on proper appreciation of evidence.

Heard arguments of learned counsel for the applicant and have also perused the documents available on the file as well as judgment of acquittal passed by the trial Court.

In the complaint made by the complainant, it was alleged that on two occasions, accused-respondents accompanied by 5/6 police officials, visited the house of the complainant. Her husband-Jagdish and daughter-Poonam were also present but they were not examined. Even in cross-examination, the presence of her daughter-Poonam has not been proved. As per statement of Jagdish Chander, at that time, his daughter was reading in Vidyapeeth, Sirsa. Even the complainant has stated that she is not sure whether at the time of occurrence, her daughter was present in the house or not. The incident of 04.04.2010 has not been proved. Even it has not been proved that she had made various complaint against the accused persons whereas the complaints made by the complainant were inquired into and the same were found to be false and a case under Section 182 Cr.P.C. was also registered against the complainant but she was discharged in that case by this Court. The creditability of the complainant has also been found to be doubtful as she has filed complaint against Smt. Dayawanti, wife of Ashok Kumar but in the whole complaint, nothing has been said against her. Even Dayawanti

has not been made an accused in the complaint.

An affidavit Ex.D1 was given by the husband of the complainant wherein it has been admitted that the affidavit was given by him, which shows that a compromise was effected in FIR No.172 filed against him by Dayawanti. The statements of complainant as well as other eyewitness Jagdish Chander regarding the alleged incident are not believable. Complainant has failed to prove that any incident has occurred on 30.03.2010 or 04.04.2010. Accordingly, by giving benefit of doubt, the accused were acquitted of the charge by the trial Court. On perusal of statements of complainant as well as other eyewitness, it is clear that neither the two incidents nor the fact that the accused persons came to the house of the complainant and gave threat or demanded some amount under the garb of compromise, was proved

Otherwise also, it is a settled position of law that in case, two views are possible on the basis of evidence available on the file and one view is to be taken by the trial Court, then the view which benefits the accused must be taken.

Accordingly, there is no merit in the contentions raised by learned counsel for the applicant and the application for grant of leave to appeal is hereby dismissed.

07.09.2015
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(DAYA CHAUDHARY)
JUDGE