

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-643-MA of 2015 (O&M)
Date of decision: September 15, 2015

State through Roshan Lal

...Applicant

Versus

Ashok Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Pankaj Maini, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-State through Roshan Lal has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Ashok Kumar and other respondents, challenging the judgment dated 19.01.2015 passed by learned Addl. Sessions Judge, Hisar, vide which learned Court has not considered the appropriate provisions of law while acquitting the respondents in its judgment dated 19.01.2015.

As per the record, the complainant State through Roshan Lal filed a complaint against Ashok Kumar, Surender Kumar, Ram Partap Verma, Mahavir, SI Vijay Singh, SHO Rohtash Singh and Head Constable Dharambir under Sections 380, 455 and 506 IPC and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. As per complainant's version, Murti Devi had

sold her house bearing No.294, situated in Bhagat Singh Nagar, Hisar to the complainant vide sale deed No.3201 dated 23.07.2009. The complainant became owner in possession of the same. The accused No.2 was partner with the complainant in the business of property dealing. The complainant had given one room of his house on rent to accused No.4 Mahabir brother-in-law of accused No.2 Ashok, brother of accused Surinder. Later on, accused No. 1 to 4 became dishonest and they started placing their articles in that very room. They started to dispossess the complainant as well. On account of act of accused No. 1 to 4, on 17.10.2009, they had beaten the complainant and had threatened to dispossess the complainant from his house. Thus, a case under Sections 457, 380, 323 and 506 IPC was registered against the accused. The accused No.1 to 4 conspired with one another and succeeded in getting false and forged agreement in the name of Murti Devi on 20.02.2006, according to which, they had shown themselves to be in possession of the house, whereas the accused No. 1 to 4 were not in possession of the said house. The accused No.4 had also vacated the tenanted room on 09.04.2010. It is also stated that Murti Devi never executed any agreement in the year 2006. Even a civil suit was also filed by Ashok Kumar against the complainant and he by conspiring with accused No.5 to 7, wanted to take possession of the house which was in possession of the complainant. On 09.06.2010, accused Rohtash and Vijay Singh called complainant in Police Station, City Hisar and asked him to leave his claim for the house. On 10.06.2010, the house of the complainant

was locked but at 5:00 p.m., he got an information that the accused No. 5 and 6 accompanied by 15-16 police officials reached house of the complainant including accused No. 1 to 3. Accused No. 5 and 6 with the help of other police officials were breaking open the lock of the house and they had broken the lock. When the complainant raised hue and cry, several people gathered at the spot but the accused taking advantage of their power and position encroached upon the house of the complainant and accused No. 1 to 3 had placed their articles and they took away house hold articles of the complainant along with documents. The complainant was picked up by the police and was involved in false FIR No. 530, dated 10.06.2010 under Sections 147, 148, 448 and 506 IPC.

Learned Addl. Sessions Judge, Hisar, after discussing the evidence, acquitted the accused of the charges framed against them.

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

The complainant in the evidence mainly relied upon one video film which was prepared by Ashok Kumar from his mobile phone camera, in which the accused No.5 to 7 were seen breaking open the lock of the house of the complainant but the Court held that the complainant has not examined the shopkeeper who developed the CD from the mobile chip which was produced in the Court. Even the receipt and payment regarding developing that CD has not been produced on the record. The CD was got prepared after 10-15 days of the occurrence but PW-2 Ashok Kumar stated that he does not

know as to whether said shopkeeper is still alive or not. Therefore, the shopkeeper who developed the CD is only the person to prove and complete the link whether the CD has been prepared correctly without tampering but said witness has not been examined. Hence, no reliance can be placed on the CD produced by the complainant as it is not duly proved that contents of the mobile chip have not been tampered with. The Court has correctly not relied upon the mobile chip and the CD.

The Court also held that no independent witness has been examined whereas the complainant has stated that people of entire *mohalla* gathered there. PW-2 Ashok Kumar is cousin of PW-1 Roshan Lal, complainant. The occurrence took place on 10.06.2010 and the complaint was filed on 10.08.2010 i.e. after the delay of 60 days and no explanation has been given regarding the same. The Court also discussed that the complainant should disclose the caste of the offenders and also the fact that offenders know the caste of the accused as well. The Court held that complainant has nowhere pleaded that accused was having knowledge that complainant belonged to scheduled caste. The complainant has also not disclosed about the caste of any of the accused.

Learned Court also held that in order to prove the allegations, the complainant had to prove that on 10.06.2010, he was in possession of the house in dispute but the complainant has not placed on record any documentary or any other cogent evidence to prove the same. On the other hand, the accused have placed on

record certified copy of the complaint dated 17.02.2010 Ex.D1, the perusal of which shows that the said complaint was filed by the complainant Roshan Lal against accused No.1 to 4 under Sections 323, 341, 506 and 34 IPC read with Section 3 (i) (iv) and 3 (1) (v) (x) of the SC & ST Act. Accused have also placed on record certified copy of order dated 30.07.2011 Ex.D2 passed by the then learned CJM, Hisar. The complainant did not dispute the fact that he had filed the aforesaid complaint against accused No.1 to 4 and the aforesaid order was passed by the Court in said complaint. The Court held that Ex.D1 reveals that complainant in para No.2 to 5 of his complaint pleaded that he owns house No.294 situated in Bhagat Singh Nagar. He let out one room of the said house in favour of Mahavir at the instance of accused Ashok and Surender for some period. Accused No.1 to 3 used to visit accused Mahavir, who is brother-in-law of accused No.1.. The accused wanted to take forcible possession of the house. Complainant asked the accused to vacate the house but they did not vacate the same. Accused No.1 to 3 kept their articles in the house slowly-slowly and took the possession of the house illegally in connivance with accused Mahavir. The Court held that these averments show that accused were in possession of the disputed house at the time of occurrence.

In view of the above, I find that the findings given by learned Addl. Sessions Judge, Hisar are correct, as per evidence and law. Nothing has been pointed out as to which findings are perverse and not as per evidence and law. Nothing has been pointed out as to

which evidence has been misread or which evidence has not been discussed by the Court below.

From the above discussion, I find that judgment dated 19.01.2015 passed by learned Addl. Sessions Judge, Hisar, is correct, as per evidence and law.

Keeping in view above facts and circumstances, I find that no ground is made out to grant permission for leave to appeal and therefore, the present application stands dismissed.

September 15, 2015
Vgulati

(INDERJIT SINGH)
JUDGE