

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-86-MA of 2014 (O&M)
Date of decision: August 31, 2015

Prem Nath

...Applicant

Versus

Surjit Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rajeev Dev Sharma, Advocate
 for the applicant.

Mr.R.S.Manhas, Advocate
 for the respondents.

INDERJIT SINGH, J.**CRM No.2262 of 2014**

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 60 days in filing the application seeking leave to appeal, is condoned.

CRM No.A-86-MA of 2014

Applicant-Prem Nath has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Surjit Singh and other respondents, challenging the judgment dated 19.09.2013 passed by learned Addl. Chief Judicial Magistrate, Pathankot, whereby the complaint filed by the applicant was dismissed and accused-respondents were acquitted from the charges

under Sections 452, 427, 148 and 149 IPC.

It is stated in the application that Court below has committed a grave legal error in acquitting the respondents in the complaint filed by the applicant. It is also stated that court has totally overlooked the evidence brought on record by the applicant, from which the applicant has fully proved the guilt of the respondents beyond reasonable doubt and the impugned judgment is contrary to law. It is also stated that all the witnesses were able to prove the occurrence beyond any doubt.

Notice of motion was issued and learned counsel for the respondents appeared and contested the application.

As per the record, the complainant Prem Nath filed a complaint against accused-respondents Surjit Singh, Mehar Singh, Lakhbir Singh, Om Lal, Chaman Lal and Rajinder Singh under Sections 452, 427, 379, 506, 148 and 149 IPC. As per the complainant, he is owner in possession of one plot measuring 10 marlas and he constructed boundary walls on three sides of the plot and also staked 2000 bricks near the plot. On 10.07.2004 at about 12.00 noon, he was on his duty but his son Lovedeep Rai along with Tarlok Singh was present in the house. Meanwhile, accused-respondents along with 10-15 unidentified persons, who were armed with deadly weapons, came on the spot in Sumo bearing registration No.HR-26J-0657 and Maruti Car bearing registration No.PB-07-5781 with intention to take forcible possession of the plot of complainant. Lovedeep Rai along with Tarlok Singh came out of the house and on

seeing the son of the complainant, accused Surjit Singh and Rajinder Singh raised *lalkara* and all of the accused along with other unidentified persons, ran towards Lovedeep Rai with their respective deadly weapons and crossed the constructed wall. Lovedeep Rai and Tarlok Singh saved their lives after running from the spot. It is the case of the complainant that all the accused demolished about 50 feet wall from western side of the plot and took away the malba as well as 2000 bricks. The complainant filed the complaint, which was marked for enquiry and FIR was registered. Thereafter, the FIR was cancelled, which was accepted by the Court on 24.09.2007.

On the basis of the evidence on record, learned ACJM, Pathankot acquitted the accused-respondents vide impugned judgment dated 19.09.2013.

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

From the record, I find that as per complainant's version himself, he has not seen the occurrence. As per complainant, his son Lovedeep Rai and one Tarlok Singh were present on the spot and when accused raised *lalkara*, they ran away from the spot. It is nowhere stated in the complaint that accused demolished the wall in their presence. Furthermore, the FIR was got registered but after investigation, it was cancelled and the cancellation report was accepted by the Court below. Moreover, learned ACJM, Pathankot has discussed the evidence on record minutely and as per law. Nothing has been pointed as to which evidence has been misread and

which evidence has not been considered by the Court below. Learned ACJM, Pathankot has held that no proof has been produced regarding purchase of alleged 2000 bricks. Lovedeep Rai was called for cross-examination after framing of the charge but he has not been produced after charge for further cross-examination, therefore, his statement also cannot be read into the evidence.

As regarding Tarlok Singh, he belonged to other village and there is contradiction regarding his presence, whether he remained for one hour on the spot. The alleged occurrence took place at 12 O'clock. So, if he remained on the spot for one hour, then he might have left the place of occurrence at 1.00 P.M. but as per the complainant version, he was told about the occurrence by Lovedeep and Tarlok Singh when he came back at 4.30 P.M. from his duty.

Keeping in view the above discussion, I find that nothing is there from which it can be held that findings given by learned Court below are perverse or not as per law. I find that judgment dated 19.09.2013 passed by learned ACJM, Pathankot, 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.

August 31, 2015
Vgulati

(INDERJIT SINGH)
JUDGE