

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

CRM-A-988-MA-2014 (O&M)

Date of decision : January 19, 2015

Jangir Singh

.....Appellant

Versus

Darshan Singh & Ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE S.S. SARON
HON'BLE MR.JUSTICE GURMIT RAM

Present : Mr. Janak Singh Bhinder, Advocate,
for the applicant.

S.S. Saron, J.

The applicant has filed the present criminal miscellaneous application in terms of Section 378 (4) of the Code of Criminal Procedure ('Cr.P.C. - for short) seeking leave to appeal against the acquittal of respondents vide judgment and order dated 21.01.2014 passed by the Judicial Magistrate Ist Class, Sunam. Along with the appeal, a criminal miscellaneous application has been filed seeking condonation of delay of 66 days in filing an application for grant of leave to appeal.

We have heard learned counsel for the applicant and perused the record of the learned trial Court, which was requisitioned.

The applicant - Jangir Singh filed a complaint on 02.09.2011 in the Court learned Judicial Magistrate Ist Class, Sunam against Darshan Singh son of Jarnail Singh, Surjit Kaur wife of the applicant - Jangir Singh, Harwinder Kaur wife of Darshan Singh, Balwinder Singh son of Darshan

Singh and Chand Singh son of Sunder Singh residents of Saharana Patti, Model Town Chhajli, Police Station Chhajli, Tehsil Sunam District Sangrur (respondents No.1 to 5) alleging commission of offences punishable under Sections 326, 324, 295, 148, 149 of the Indian Penal Code ("IPC" for short).

The complainant stated that he is an 'Amritdhari Gursikh', he remains in the shelter of Sikhism and believes in God; besides, he follows the law and is a respectable citizen. He is resident of Model Town Chhajli and works as a 'Chowkidar' at Sunam for his livelihood. The complainant, along with Babar Singh (PW-3) son of Pritam Singh resident of Namol on 1.7.2011 had gone for his personal work to village Chhjali. The time was at about 3:00 pm when the complainant was standing in village Chhajli near the bus-stand of Chatha Nanhera for boarding a bus. In the meantime the accused after conspiring amongst themselves came near the complainant at the Bus Stand Chhajli. Chand Singh (respondent No.5) was carrying a *Gandasa* in his hand and Harwinder Kaur (respondent No.3) started saying that the complainant should compromise with her mother-in-law. The complainant then said that do not bother and he would compromise in the Court only. As he said this, Surjit Kaur (respondent No.2) pushed the complainant due to which his turban fell off on the ground and Surjit Kaur (respondent No.2) caught hold of his hair. Later Harwinder Kaur (respondent No.3) caught hold of the beard of the complainant and started pulling it. Then Surjit Kaur (respondent No.2) told Chand Singh (respondent No.5) as to what was he seeing and when would his *Gandasa* come in use. On hearing this Chand Singh (respondent No.5) with the *Gandasa* that he was carrying in his hand inflicted a blow on the

complainant. The complainant in order to save himself raised his hand and the *Gandasa* hit on the front side of the small finger of the right hand. The complainant was bleeding profusely.

Babar Singh (CW-3) who was standing with the complainant and the complainant himself raised an alarm and the accused ran away from the place. On raising an alarm by the complainant, Babar Singh (CW-3) and other persons looked after the complainant. Then Babar Singh (CW-3) took the complainant in a bus to the hospital at Sunam and got him admitted, where the complainant was being treated.

Dr. Naresh Kumar, Medical Officer, Civil Hospital, Sunam was examined as CW-1 in the pre-charge evidence. He tendered in evidence his affidavit dated 18.10.2011 (Ex.CW1/A) and stated that it be read as a part of evidence. He brought the original Medico Legal Report ("MLR" for short), a copy of which was Ex.C1, the pictorial diagram Ex.C2 and injury report Ex.C3. These were correct according to the record. In his affidavit, he deposed that he was posted as Medical Officer at Civil Hospital, Sunam on 01.07.2011. A patient namely Jangir Singh (applicant) was brought by Babar Singh, a friend of the patient on 01.07.2011 at 3.30 pm. Dr. Naresh Kumar medico legally examined the patient and noticed the following salient findings:-

"1. The person was conscious, cooperative, PR-80 per minute, BP 116/70 mm of Hg System - NAD (nothing abnormal detected).

2. Following injuries were noticed on the patients body:-

A. Amputated (loss of distal hlaf) right little finger

at middle phalanx (Incised wound with torrential bleed).

3. Injuries were kept for X-rays.
4. Probable duration of injury was within eight hours and the nature of weapon was sharp.
5. X-ray report came as loss of distal half right little finger at middle phalanx.
6. The patient was admitted in the hospital from 01.07.2011 to 04.07.2011.”

The complainant examined himself as CW2 and also examined Babar Singh as CW3 on 07.12.2011. The complainant reiterated the allegations as made in his complaint regarding the assault made on him by the accused. Babar Singh CW3 corroborated the same. The preliminary evidence was thereafter closed.

The learned Judicial Magistrate on 07.12.2011 after considering the preliminary evidence including the medical evidence found that the accused (respondents No.1 to 5) in prosecution of their common object voluntarily caused grievous and simple injuries on the person of the complainant; besides, insulted his religious feeling by pulling his beard.

Accordingly, sufficient prima facie grounds were found to be made out for summoning the accused for the offences punishable under Sections 326, 324, 295, 148 and 149 IPC. All the accused were ordered to be summoned to face trial.

After summoning order had been passed, Dr. Naresh Kumar, Medical Officer, CHC, Ahmedgarh CW1 was again examined on

13.06.2012. He tendered in evidence his own affidavit Ex.CW1/A which it was stated be read as part of the evidence. He brought the original MLR register. The same was in his handwriting and bears his signatures. Carbon copy of the same Ex.C1, pictorial diagram Ex.C2 and injury report Ex.C3 were tendered in evidence.

In cross-examination on behalf of learned Counsel for the respondents, it is stated by Dr. Naresh Kumar when any person raises his hand in defence it was obvious that the weapon would hit directly on the finger from the front side. It is stated as incorrect to suggest that injury No.1 could not be inflicted by a direct blow with a sharp edged weapon. The possibility could not be ruled out. However, circumstantial evidence was needed to be seen for consideration. It is stated as wrong to suggest that the distal phalanx of right little finger of Jangir Singh was an old injury. It was wrong to suggest that he prepared false MLR and false X-ray report at the instance of the complainant.

HC Angrej Singh, Police Station Chhajli was examined as CW2. He stated that he had registered FIR No.90 dated 03.07.2011 for the offences under Sections 324, 148 and 149 IPC at Police Station Chhajli. Its photocopy was Ex.C4. MHC Darshan Singh had registered it and he recognized his writing. In cross-examination it is stated that the said case was investigated by ASI Gurmail Singh. Cancellation report of the said FIR was prepared on 07.07.2011. He did not know on what basis was the cancellation report prepared.

The complainant Jangir Singh again examined himself i.e. after summoning as CW3. He reiterated the version as given in the complaint.

In cross-examination, he inter alia stated that he has nothing at Model Town and then self stated that he has a house at Lambra which is near the walking path. The ownership of the house was not in his name and then he self stated that he had made the house and his meter was installed. It is stated as wrong that he had not constructed a house in Model Town. It is stated that the distance from village Chhajli to Model Town, Chhajli was about 1 ½ kilometer and in Chhajli there is a Bus Stand of Chatha Nanhera Wala. From there, Model Town, Chhajli is at a distance of about ½ kilometer. He had gone to village Chhajli at about 3.00 pm and Babar Singh was with him. He had gone to Gurbax Singh, whose house was near the Bus Stand of Chatha Nanhera Wala. On one side of his house is the house of Pala Singh and on one side is the house of Baldev Kaur. From there, the big Gurdwara was at a distance of 20/30 'karams'. Gurbax Singh had not met him at his home. He was single only and there was no other family member. He had gone to him (Gurbax Singh) to get money. He had to take Rs.5000/- from him, which was his money. The police had recorded his statement in the hospital. He did not go to the Gurdwara after the incident. He had a case regarding 'karewa nama' with accused Surjit Kaur, which was pending in the same Court. He did not remember the date. It is stated as wrong that there was no 'karewa nama' case pending. It is stated as wrong that he had wrongly got this recorded. The police did not conduct any investigation on his statement. He had gone to the police station to inquire about this but he did not remember the date. He did not remember that his case was investigated by ASI Gurmail Singh. The father's name of Darshan Singh was Jarnail Singh, who was adopted son of Takha Singh,

who was of Saharna Patti. It is stated that Surjit Kaur accused was the widow of Jarnail Singh and Harvinder Kaur is the daughter-in-law of Jarnail Singh; besides, Balwinder Singh was his grandson. He had no grand daughter. He was unmarried. He had a 'karewa' with Surjit Kaur which was on the file. His vote and ration card was made at village Chhajli which was earlier made with Surjit Kaur, which he had burnt about three years earlier. It was wrong to suggest that he had no ration card with Surjit Kaur. It was also wrong that he had no vote with Surjit Kaur. Babar Singh it is stated does Chowkidar with him at Sunam and he knew him for the last two years. Both of them were Chowkidar at Sunam. They resided separately. It was wrong to suggest that the accused had not inflicted any injuries on him. It was also wrong that he had got prepared a false medico legal report and got registered a false FIR against the accused at Police Station Chhajli. It was wrong that the police after recording his statement, read it out to him. It was also wrong that he after hearing his statement had put his thumb impression. It was also wrong that during investigation by Police Station Chhajli, found that he had on his own prepared a story which was found to be false and then he filed the false complaint against the accused. It was stated as wrong that the accused had not inflicted any injuries on him. It is stated as wrong that he had made a false statement.

Babar Singh CW4 was also examined after summoning. Then vide order dated 20.03.2013 charges were framed against the accused respondents for committing offences punishable under Sections 148 read with Section 149 IPC, under Section 295 read with Section 149 IPC, Section 326 read with Section 149 IPC and Section 324 read with Section

149 IPC. The accused were directed to be tried by the Court for the said offences. The contents of the charge were read over and explained to the accused in simple Punjabi. They heard and understood the charge and pleaded not guilty and claimed trial.

After framing of charge, the complainant in order to prove the charges, examined Gurmail Singh ASI CW1, HC Angrej Singh CW2, the complainant examined himself as CW3; besides, Babar Singh as CW4.

ASI Gurmail Singh, Police Station Chhajli who was examined after charges had been framed. He stated that he had brought with him the original FIR No.90 dated 03.07.2011 registered at Police Station Chhajli for the offences punishable under Sections 324, 148, 149 IPC. A true photocopy of which was Ex.C1. The FIR had been got registered by MHC Darshan Singh, whose signatures he identified.

In his cross-examination, he has stated that no challan on the basis of the FIR was presented and a cancellation report was filed. The Investigating Officer in the case did not find any offence to be made out, a copy of the cancellation report Ex.D1 was tendered in evidence. The Investigating Officer recorded that statements of the complainant Jangir Singh, Shera Singh, PHG Daljit Singh, which are Ex.D2 and Ex.D3. These were objected to.

Jangir Singh (complainant) besides, Babar Singh were cross-examined after framing of charges.

The statements of the accused in terms of Section 313 Cr.P.C. were recorded in which all the incriminating evidence which had come against the accused was put to them, which they denied in toto and pleaded

their innocence. In defence, they took the stand that a false complaint had been filed against them and they were innocent.

In defence Sarup Singh was examined as (DW-1), he accepted his statement Ex.D2 made before the Police.

The learned Judicial Magistrate Ist Class, Sunam after considering the evidence and material on record acquitted the accused.

Learned counsel appearing for the applicant submits that there has been a misreading of evidence, besides, the case against the respondents stands fully proved.

We have given our thoughtful considerations to the matter, the learned Judicial Magistrate has considered the present case and held that the complainant had failed to prove his case beyond shadow of any reasonable doubt. It was held that accused never caused any injury, besides, he failed to prove any previous litigation. Even from the statements in Court, the Court opined the presence of the accused at the alleged place of occurrence was not proved. According to the complainant he had gone to meet Gurbux Singh to collect his money but the complainant did not examine this witness, accordingly, it was observed that he had withheld this evidence and the purpose of visiting the village where the incident had occurred was not proved. It was held that the complainant had suffered injury on his own and all the injuries were self-inflicted injuries. The complainant had concocted a false and fabricated story and involved the accused in the present case. The complainant himself admitted that he had litigation with Surjit Kaur, therefore, to avoid his liability, he had implicated accused Surjit Kaur along with her relatives.

The independent witness namely Babar Singh, who stepped in the witness-box as CW-4 stated that he deposed the facts as stated by the complainant.

The police had registered the case and after investigation, the case was found to be false. According to the statement of the complainant before the Police after the alleged incident, he had gone to the Gurudwara Sahib where he met Sarup Singh (DW1) and Shera to whom he disclosed the entire incident, but when Police investigated the matter and recorded the statements of the said persons, they stated that no such occurrence took place.

According to the learned counsel for the applicant, the learned Trial Court has not given any consideration to the offences punishable under Section 295 IPC inasmuch as religious sentiments of the applicant were hurt when his turban fell off and his beard was pulled. After giving our thoughtful consideration to this aspect, we find no merit in the same. Once the learned trial Court has held the entire incident to be false and fabricated, the question of hurting the religious sentiments by the turban of the complainant allegedly falling and the allegations of his beard being pulled, are also held to be not established. Sarup Singh, the independent witness to whom complainant is said to have made a statement did not favour the complainant before the police and his statement Ex.D2, was proved by the respondents by examining him as a defence witness. Therefore, we find that the learned trial Court has correctly appreciated the evidence and material on record and find no reason to interfere with the same.

In the circumstances, we find no merit in the application seeking leave to appeal and the same is accordingly dismissed. The application for leave to appeal having been dismissed, the question of delay in filing the application for leave to appeal is only academic. Consequently, the same is also dismissed.

**(S.S. SARON)
JUDGE**

January 19, 2015.

Gaurav Sorot/A.Kaundal

**(GURMIT RAM)
JUDGE**