

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR No. 2371 of 2013 (O&M)

Date of decision : January 30, 2015

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Mukand Hari Marwaha

.....Petitioner

Versus

State of Punjab and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. S.K Bawa, Advocate for the petitioner.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

Present revision petition has been filed against the judgment dated 30.4.2013 passed by the Additional Sessions Judge, Fast Track Court (Ad Hoc) Jalandhar, whereby the appeal against the judgment dated 26.11.2011 passed by the Judicial Magistrate First Class, Jalandhar was dismissed. Vide the trial Court judgment, respondents no. 2 & 3/accused were acquitted of the charges leveled against them.

Facts of the case, in brief are that respondent no.2 is the father-in-law of the petitioner, whereas respondent no.3 is son of respondent no.2 and brother-in-law of the petitioner. The daughter of respondent no.2, Renu alias Harpreet Kaur, who was married to the

petitioner always created problems for the petitioner and their relations grew strained. Renu left her matrimonial house and went to her parental house. In order to create problems for the petitioner, respondents no.2 & 3/accused, on 4.10.2004, at about 8 a.m, forcibly entered the factory premises of the petitioner at 208, New Raj Nagar, Basti Bawa Khel, Jalandhar, when the petitioner was not present there. They gave beatings to the servant namely Dharmesh and snatched the keys of cash box from him and took away an amount of about Rs.40,000 -50,000/- lying in the cash box and took away machinery also. The matter was reported to SSP, Jalandhar on same day by the petitioner through application dated 4.10.2004. In this background, the complaint was filed by the petitioner.

The accused were summoned to face trial under Sections 452, 323, 383 IPC.

To prove its case, the petitioner examined himself as CW-1, Dharmesh Kumar as CW-2 and thereafter closed its pre-charge evidence.

Charges were framed against the accused under Sections 452, 382 IPC, to which, they pleaded not guilty and claimed trial.

Statements of the accused under Section 313 Cr.P.C were recorded in which all the incriminating evidence appearing against them was put to them, they denied the allegations and pleaded innocence and false implication.

As per the allegations of the petitioner on 4.10.2004, he was not present at the shop when both the accused forcibly entered the premises, gave beatings to his servant namely, Dharmesh and took

away some Rs. 40,000 to Rs.50,000/- lying in the cash box. Moreover, they threatened to kill him. The petitioner in his deposition as CW-1 narrated the allegations in the complaint. However, he admitted that he was not present at the spot. Dharmesh his servant, while appearing as CW-2, in his cross-examination, deposed that the occurrence took place in the presence of the complainant. This was treated to be a material fact and the deposition of the servant went against deposition of the petitioner, who admitted that he was not present when the accused had entered his premises. Petitioner thereafter miserably failed to prove the payment of Rs.50,000/- to his firm to establish that this amount was lying in the cash box of his shop. Apart from the above discrepancy in the deposition of CW-2, the incident became doubtful on account of another fact because as per the version of the petitioner, many persons were available there including one Rakesh Batra, his elder brother and some of neighbors, who witnessed the alleged occurrence, but none of them have been examined by the complainant. The deposition of CW-2 Dharmesh has not been taken to be reliable as he claimed that the petitioner was present at the time of occurrence. Moreover, he did not get his medical examination conducted at all. The complaint was to proceed only on the deposition of the petitioner/complainant. The respondents are the father-in-law and the brother-in-law of the petitioner. The petitioner admitted that he had lodged FIR with regard to the above incident which was cancelled by the police. Hence the version of the petitioner was rightly held by both the

Courts as doubtful coupled with the fact that the defence had placed on record copy of the judgment Ex.DC in criminal case 'State vs. Baldev Singh and Kulwinder Singh' which was lodged at the instance of the present petitioner in which respondents were acquitted from the charges. Ex.DD is copy of civil suit No.185 of 2007, which was dismissed in favour of respondents and against the present petitioner. Ex.DF is copy of another complaint filed by the present petitioner against respondents which was dismissed on 25.4.2011 for want of prosecution. Ex. DH is copy of another civil Misc. application filed by petitioner which was withdrawn. The above litigation shows that there was long standing litigation between the parties, which was on account of matrimonial disputes pending between the present petitioner and daughter of respondent no.1.

In view of the above and keeping in view the fact that the complaint was filed after a gap of almost 4 months, trial Court dismissed the complaint. There was no explanation for delay in filing the complaint. After going through the judgment passed by the both the Courts, the respondents have been acquitted as merely on the deposition of CW-2 Dharmesh without any medical examination, the allegations against the respondents could not be substantiated. There were pending litigations between the parties and finally the petitioner had admitted in his deposition that he had come to the spot five minutes after the incident and there were no other neighbors to support the version of the petitioner. The judgment passed by both the Courts does not require any interference as there is no evidence

which has been misled by both the Courts below which could lead to conviction of both the respondents.

In view of all that has been discussed above, the revision is dismissed.

January 30, 2015
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(RITU BAHRI)
JUDGE