

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

CRM No.A-341-MA of 2013 (O&M)

Date of decision: August 16, 2016

Kewal Krishan

...Applicant

Versus

Bachan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rishi Nijhawan, Advocate
for the applicant.

Mr.Manoj Kumar, Advocate
for respondent No.1.

Mr.S.S.Kharb, Advocate
for respondents No.2 and 3.

INDERJIT SINGH, J.

Applicant-Kewal Krishan has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Bachan Singh, Pardeep Harit and Kuldeep Sheoran, challenging the impugned judgment dated 11.02.2013 passed by learned Chief Judicial Magistrate, Kaithal, whereby the accused-respondents were acquitted.

It is mainly stated in the applications that accompanying appeal is likely to succeed on the grounds taken therein. It is further stated that learned trial Court has completely misinterpreted the provisions of section

law in observing that no sufficient evidence is there to prove mens rea as required under section 499 IPC. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Kewal Krishan filed a complaint against accused Bachan Singh, Pardeep Harit, Kuldeep Sheoran, Vijay Chopra and Avinash Chopra under Sections 499 and 500 IPC. Later on, the complainant withdrew the complaint against accused No.4 Vijay Chopra, Editor-in-Chief and accused no.5 Avinash Chopra, Joint Editor, Punjab Kesari. The brief facts of the case as noted down in the judgment passed by learned CJM, Kaithal, are as under:-

“Present complaint has been filed by the complainant against the accused present before this Court inter alia on the allegations that his two sons doing the business of chemist shop at Kaithal and one out of them is married and one daughter who recently completed her education and is marriageable age. Accused no.1 was the tenant of the complainant and his family members, with whom there had been a protracted long litigation regarding his occupation of the land without payment of lease amount and he (complainant) had filed a petition for ejectment under form 'L' of Punjab Security Land Tenure Act before A.C. Ist Grade, Gulha since 1990 and lastly he (complainant) filed a case under form 'L' Punjab Security and Land Tenures Act vide case no.16 dated 08.08.2006 and the petition was accepted and the accused no.1 ordered to be ejected vide order dated 24.07.2001 passed by A.C. Ist Grade, Gulha. Accused no.1 filed an appeal which was dismissed by the Collector, Kaithal vide judgment dated 04.06.2002 holding the accused no.1 to be chronic defaulter in payment of the rent/lease to the complainant. Accused no.1 further challenged the order before Commissioner Ambala Division and the same was decided on 14.01.2003 where he offered to pay the total outstanding lease money and he was directed to pay the batai within three months failing which the ejectment order shall stand. But again instead of making the total payment he (accused no.1) further challenged the order of Commissioner before the Financial Commissioner, Haryana which was dismissed vide order dated 07.07.2005 holding that he (accused no.1) was not interested in complying with the directions of the court and was a clear defaulter in payment of rent and the revision petition was dismissed. Thereafter, the

complainant filed that execution petition before A.C. Ist Grade, Gulha, who in turn issued the warrant of possession against him (accused no.1) and as there was apprehension of breach of peace by the tenant hence the revenue officers sought police help vide report dated 23.03.2005 and police help was also granted. It is further submitted that accused no.1 had also filed a civil suit for permanent injunction but the stay was declined vide order dated 12.06.2006 and ultimately the suit was dismissed on 24.08.2006 and now the complainant was to take possession of land measuring 31 kanals 04 marlas at village Kharkan Tehsil Gulha District Kaithal. Accused no.1 is a desperate person and after loosing before the court of law started filing false complaints against him before the Deputy Commissioner as well as to the Superintendent of Police, Kaithal. One such complaint was investigated by Deputy Superintendent of Police, Gulha, who found the complaint to be false and recommended for taking action under Section 182 IPC against accused no.1 vide recommendation report dated 10.10.2004. accused no.1 is habitual of giving false complaints against him (complainant) one after the other just to pressure him and overawe him for not taking legal recourse for taking the possession of land from him. Now, he colluded with accused no.1 who is a local correspondent of Punjab Kesari news paper and within an intent to humiliate and defame the complainant, took the help of accused no.2 to 5 and all the accused with malafide intention to defame the complainant in the eyes of public at large without verifying the facts/imputations stated by accused no.1 to accused no.2 and without taking the counter view of the complainant rushed in publishing the news item in their news paper Punjab Kesari dated 18.08.2006 and even the accused no.3 who is the Incharge of Kaithal area and accused no.4 & 5 being the Editor-in-Chief and Joint Editor of Punjab Kesari did not bother to check up the news item proposed to be published in their news paper before publishing the same especially when the news item itself was clearly of a defaming nature and even did not bother to take the version of the complainant to cross check the veracity of truthfulness of the imputation being leveled by accused no.1 against the complainant whereas the accused no.2 to 5 were duty bound to first take the version of the complainant before publishing the news item published on 18.08.2006 against the complainant was clearly without the cross version of the complainant. Accused no.2 not only forwarded a false and defamatory version of the accused no.1 to be published in their news paper but also intentionally published a photograph of the complainant also just for addition of insult to the injury being caused to the complainant and the news item itself shows that the same was published in connivance with accused no.1 out of some extraneous consideration with intent to harm reputation of complainant. Accused no.2 with malafide intention to further defame the

complainant also mentioned regarding pending case under Prevention of Corruption Act which is subjudice before the Court. The act of the accused is totally reckless, defamatory, false, exaggerated and distorted without having any basis which resulting in defaming the complainant in the estimation of others and lowered his moral and intellectual character and also lowered the credit of the complainant which the complainant not only suffered in reputation but also reputation of the whole of the family which resulted not only the lowering the reputation of the complainant in the estimation of other but also this brought disgrace to the complainant as well as his family and the complainant and his family suffered the mental torture and defamation after reading this defamatory news item. The sons of the complainant are in good business at Kaithal an the complainant had been in search of a good bridegroom for his young daughter and due to this defamatory news item the matter of settlement of marriage of his daughter also suffered a set back which was great shock for the family and complainant. Hence, this complaint.”

Learned CJM, Kaithal, after appreciating the evidence on record, acquitted the accused-respondents vide impugned judgment dated 11.02.2013.

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

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

From the record, I find that the findings given by learned CJM, Kaithal, are correct, as per evidence and law. The evidence has been appreciated in right perspective. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below. Learned Magistrate held that the perusal of the news item Ex.C14/A shows that the intention for publishing the said news item was with regard to the complaint made by accused No.1 to Deputy Commissioner regarding the dispute with the complainant. Even

caption of news item Ex.C14/A is that accused No.1 was waiting for justice for the last 15 years and from the said heading it appears that it was made against the system and intention was not to give the impression that accused was a man of fraudulent nature. In the news item it is mentioned that accused no.1 had given complaint to Deputy Commissioner to the effect that complainant on the basis of forged document wants to grab the land which was under the cultivating possession of accused No.1. Nowhere in the news item, there is any opinion either on behalf of the reporter-accused No.2 or on behalf of accused No.3 to the effect that allegations made by accused No.1 against the complainant in the complaint given to the Deputy Commissioner are correct. The Court held that there is nothing unusual in publishing the grievances or complaints made by the general public to the Deputy Commissioner in the 'Khula Darbar' or in his office.

It is also in the evidence that though in the previous litigation between complainant and accused No.1 i.e. Bachan Singh, regarding ejection of the land, accused No.1 was not satisfied and was still pursuing the said matter against complainant with the concerned Government authority and accused No.1 had given the complaint to Deputy Commissioner in Khula Darbar.

Furthermore, learned lower Court held that complainant has not examined any such person to told him that news item in question was got published by accused No.2 by taking money from accused No.1. The news item also mentioned that a corruption case was also registered against the complainant but said fact is true and also published in various newspapers before this news item was published.

From the findings given by learned CJM, Kaithal, I find that

though this has not been discussed by learned CJM but the publication of the report is also not proved by the complainant as per law by bringing the record from the office of Newspaper or examining its staff member. The news in the newspaper is not per se admissible. The news item is to be proved as per law.

The perusal of the findings given by learned Court below shows that these have been given while appreciating the evidence on record in right perspective. In no way, the findings can be held as perverse. The impugned judgment dated 11.02.2013 passed by learned CJM, Kaithal is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

August 16, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No