

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.34991 of 2013
and
Criminal Misc. No.A-523-MA of 2013 (O&M)

.....

Date of decision:2.2.2016

Surender Kumar

...Applicant

v.

Ramkala and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Narender Yadav, Advocate for the applicant.

.....

Inderjit Singh, J.

Cr. Misc. No.34991 of 2013:

For the reasons mentioned in the criminal miscellaneous application, the delay of 526 days in filing the criminal miscellaneous application for leave to file appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-523-MA of 2013:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Ramkala and others-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 21.12.2011 passed by learned Judicial Magistrate Ist Class, Mohindergarh.

It is mainly submitted in the application that the applicant is

filing the accompanying criminal appeal against the judgment of acquittal which is likely to succeed as per grounds mentioned therein. It is further stated that the learned Judicial Magistrate Ist Class, Mohindergarh has passed a totally wrong and illegal judgment whereby the respondent has been acquitted. It has been prayed that the application may be allowed and leave to file appeal may be granted against the judgment of acquittal dated 21.12.2011 passed by learned Judicial Magistrate Ist Class, Mohindergarh.

I have heard learned counsel for the applicant and have gone through the record specially the judgment passed by the learned Judicial Magistrate Ist Class, Mohindergarh.

A perusal of the record shows that Surender Kumar filed the complaint against Ramkala and 11 other persons for the offences under Sections 323, 452, 506, 148 and 149 IPC. The main allegations as per the complaint are that on 6.7.2006 at about 5.30 a.m., Shakuntla mother of the complainant was going to throw the garbage and on the way accused No.1 Ramkala spit towards her. Shakuntla objected upon which Subha Chand father-in-law of Ramkala came out from his house armed with 'Danda' and Ramkala caught hold of Shakuntla from her hair and Subha Chand gave 'Danda' blow on the wrist of her right hand and gave another 'Danda' blow on the wrist of left hand. Ramesh, who was also armed with 'Danda' gave blow on the right hip of Shakuntla while accused Ranbir gave 'Danda' blow on left hip of Shakuntla. His grand-mother Murti Devi tried to rescue his mother Shakuntla, however, accused Subha Chand gave 'Danda' blow on the right arm of Murti Devi. In the meanwhile, Sukesh, Kailash, Neelam

and Ramrati reached on the spot and accused Sukesh, who was armed with 'Danda' gave 'Danda' blow on the right knee of complainant's grand-mother Murti, while accused Subha Chand twisted the finger of her left hand. Accused Kailash, Neelam and Ramrati also inflicted injuries upon Murti Devi. They raised a hue and cry, upon which Bijender, Member Panchayat and Leela Ram intervened in the fight and rescued them from the assailants. At that time, no male member was present at the house and Shakuntla accompanied by Murti Devi went to Police Station, Kanina and on the statement of Shakuntla, DDR No.5 dated 6.7.2006 was recorded. It is also the case that on the same night at about 12.30 p.m., the complainant was present all alone in the house and the father of the complainant was at Gurgaon on his duty, while Shakuntla and Murti Devi had gone to Kanina for Medico-legal examination. At that time, all of a sudden Ramkala and her brothers, who are residents of Misri Village being the accused Krishan, Amarpal, Sunil and Devender, who were armed with Lathis, trespassed into the house of the complainant and accused Krishan inflicted blow with lathi on the left side of head of the complainant. Accused Amarpal gave lathi blow on the left side of neck of the complainant and accused Sunil gave lathi blow on the wrist of his left hand while accused Devender gave lathi blow at the waist of the complainant. Apart from that accused Amarpal gave two lathi blows, one on his left foot and other on his waist. Complainant raised hue and cry upon which Sunita, sister of the complainant, Sunil, Lal Singh and Mukesh, who had come to Cooperative Bank, Pota, in connection with some work and Ajit Singh reached on the

spot upon hearing the noise of fight and rescued the complainant from the assailants. At that time, accused were threatening to kill the complainant on getting opportunity. Regarding the said incident complainant got DDR No.10 dated 6.7.2006 recorded at Police Station, Kanina and he was medico-legally examined. It is further stated that the Police failed to take any action against the accused and pressed the complainant to enter into a compromise with the accused. On 15.6.2006, the Police in collusion with the accused got a compromise recorded. However, in the said compromise, neither the complainant nor his mother or grand-mother were party and they were neither called or their consent was taken and even signatures of the father of the complainant were obtained under pressure and duress.

The learned Judicial Magistrate Ist Class, Mohindergarh, after appreciating the evidence in right perspective acquitted the accused by finding that there is no corroboration to the statement of CW-2 Surrender Kumar regarding the second occurrence and has not believed the statement of CW-1 Sunita. The Court held that Sunita's name is not mentioned in the DDR. The Court after appreciating the evidence in minute detail held that there are lot of variance in the DDR recorded by the complainant's side and also when the witnesses appeared in the Court. The Court also held that Bijender, Member Panchayat and Leela Ram, who had intervened in the first occurrence were not examined. The Court below also held that the accused Subha Chand and Ramkala had also received so many injuries, which have been proved by DW-2 Dr. Suresh Kumar as per the MLRs, but these injuries have not been explained. The Court also discussed the DDR got

recorded by DW-1 Gulzari Lal, at the statement of Ramkala accused and found that the injuries on the persons of the accused are not explained and the occurrence had not taken place as stated by the complainant. In my view also, the genesis of the occurrence has been concealed and there is nothing on the record to show as to how the accused Subha Chand and Ramkala received the injuries as proved by DW-2 Dr. Suresh Kumar. The findings given by the learned Judicial Magistrate Ist Class are correct, as per evidence and law and do not require any interference from this Court. Further more, nothing has been pointed out as to how the findings of learned Judicial Magistrate Ist Class, Mohindergarh, are perverse. Nothing has been pointed out as to which material evidence has been misread by the Court below and which material evidence has not been considered.

The findings given by the Court below are correct, as per evidence and law and have been given after appreciating the evidence in right perspective, which do not require any interference from this Court.

Therefore, I do not find any ground to grant leave to file appeal. Hence, finding no merit, the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal is dismissed.

February 2, 2016.

(Inderjit Singh)
Judge

hsp