

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.35976 of 2013
and
Criminal Misc. No.A-565-MA of 2013 (O&M)

.....

Date of decision:13.1.2016

Bhagwan Singh and another

...Applicants

v.

Attar Singh and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. S.K. Yadav, Advocate for the applicants.

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Inderjit Singh, J.

Cr. Misc. No.35976 of 2013:

In view of the averments made in the criminal miscellaneous application, that the applicants filed the appeal before the learned Sessions Judge on 17.3.2012, which was withdrawn on 3.6.2013, the delay of 442 days in filing the criminal miscellaneous application for leave to file appeal is condoned.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-565-MA of 2013:

The complainants/applicants have filed this criminal miscellaneous application under Section 372 read with Section 378(4)

Cr.P.C. against Attar Singh, ASI and Pardeep Singh-respondents seeking

grant of leave to file appeal against the impugned judgment of acquittal dated 18.2.2012 passed by learned Sub Divisional Judicial Magistrate, Mahendergarh, vide which the complaint filed for the offences under Sections 323, 166, 167, 379, 500 and 506 IPC by the complainant has been dismissed.

It is submitted in the application that the complainants/applicants, who are victim at the hands of the respondents, are filing the accompanying criminal appeal against the judgment of acquittal which is likely to succeed. It has been stated that the respondents/accused have been wrongly and illegally acquitted by the learned Sub Divisional Judicial Magistrate, Mahendergarh. It has been prayed that the application may be allowed and permission to file appeal be granted.

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

From the record, I find that Bhagwan Singh and Meena Ram-complainants filed complaint against Attar Singh, ASI and Pardeep Singh for the offences under Sections 323, 166, 167, 500 and 506 IPC. As per the facts of the complaint, Bhagwan Singh and Meena Ram-complainants were owning agricultural land in Villages Pali and Sihal. Other co-sharers filed suit for partition before the Court of Assistant Collector Ist Grade, Mahendergarh on account of wrong entry in the revenue record which was allowed and when the complainants came to know, they filed an appeal and partition proceedings were set aside on 19.4.2005. On 28.3.2006, Ajay Kumar son of Bhagwan Singh was harvesting crop of mustard in his field.

At about 9.30 p.m., the complainant Bhagwan Singh was also approaching his fields. At that time, Attar Singh, ASI, reached there in official vehicle and started hurling abuses to complainant Bhagwan Singh as well as his son. Accused Attar Singh brought tractor as well as thrasher of the complainants to the Police Station. Son of the complainant Bhagwan Singh was also brought to the Police Station, while giving beatings. On 29.3.2006, complainant Bhagwan Singh got released his son Ajay Kumar on bail. On 30.6.2006, they got released their tractor on 'spurdari'. When the complainants went to Police Station with the order of 'spurdari' of tractor, accused Attar Singh lost his temper and started hurling abuses apart from manhandling them. Both the complainants were confined to the Police lock-up. At that time, Ajay Kumar son of complainant Bhagwan Singh along with Devender were present. At about 10.00 p.m., when both the complainants were sleeping in Police lock-up, accused Attar Singh came there and gave them severe beatings. Attar Singh brought them to Civil Hospital, Mahendergarh at 11.00 p.m. On 31.3.2006, the complainants were released on bail by the SDM, Mahendergarh. It is also stated in the complaint that subsequently, it came out that on the night of 30.6.2006, both the accused, namely, Attar Singh and Pardeep Singh harvested the entire mustard crop of the complainants and took away the same.

The learned Sub Divisional Judicial Magistrate, Mahendergarh, after appreciating the evidence acquitted the accused/respondents.

I have gone through the record specially the judgment passed by the learned Sub Divisional Judicial Magistrate, Mahendergarh. The

findings given by the Court below are correct, as per evidence and law. The evidence has been appreciated in right perspective. There is nothing on the record to show that the findings are perverse. Nothing has been pointed out as to which material evidence has not been appreciated in right perspective or which material evidence has not been considered by the Court. There is nothing on the record as to which finding is perverse or against the law. A perusal of the complaint itself shows that the complainants had been arrested in a case and they had been released on bail and further the vehicle was also taken on 'spurdari' by the complainants from the Court, but nothing has been mentioned regarding those proceedings. Similarly, on 31.3.2006, they were released on bail by SDM, Mahendergarh. Accused No.1 Attar Singh was ASI at that time of the Police Station. The Court also found from the evidence that neither accused Pardeep Singh inflicted any injury nor threatened to kill. Accused Pardeep Singh is son of Madan i.e. one of the co-sharers in the land regarding which the theft was alleged, which fact had not been disputed on behalf of the complainants. The Court below also held that the only alleged eye witness to the theft is CW Ajay Kumar, who is son of Bhagwan Singh. The Court also found his version at variance with the version in the complaint. Otherwise also, in the medical examination report no marks of external injuries were found. The Court below held that it is highly improbable when the complainants were severely beaten as per their case they have not received any external marks of injuries.

Keeping in view the facts and circumstances, the Court below

also discussing the Police record given to the DC and regarding the arrest of both the complainants on 30.3.2006 etc. held that Attar Singh was discharging his official duties against the complainants. The findings given by the learned Sub Divisional Judicial Magistrate, Mahendergarh, are correct, as per evidence and law. In no way, the findings can be held as perverse, therefore, no interference is required from this Court.

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

January 13, 2016.

(Inderjit Singh)
Judge

hsp