

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

CRM No.A-792-MA of 2013 (O&M)

Date of decision: September 01, 2016

Kamlesh Kaur

...Applicant

Versus

Surinder Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Mahavir Sandhu, Advocate
for the applicant.

Mr.J.S.Mehal, Advocate for
Mr.A.S.Manaise, Advocate
for the respondents.

INDERJIT SINGH, J.

Applicant-Kamlesh Kaur has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Surinder Singh and Kirat Singh, challenging the impugned judgment dated 28.01.2012 passed by learned Sub Divisional Judicial Magistrate, Naraingarh, vide which the accused-respondents were acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is further stated that if special leave to appeal is not granted, then the applicant shall suffer an irreparable loss and substantial injury which would not be compensated later on. It is, therefore, prayed that leave to appeal be

granted.

As per the record, the complainant Kamlesh Kaur filed a complaint against accused Surinder Singh and Kirat Singh under Sections 427, 448, 453, 504 and 506 IPC. The brief facts of the complaint as noted down in the judgment passed by learned SDJM, Naraingarh, are as under:-

“The present complaint has been filed by complainant Kamlesh Kaur against Surinder Singh and others with the averments that complainant was resident of the village Yaseen Majri Dakhli Mauza Sadhaura. The complainant and her husband had purchased a plot measuring 10 marla at Raipur Viaran, Ward No.7 Naraingarh vide sale deed dated 3.1.2002 for a sum of Rs.80,000/- and the house was constructed by the husband of the complainant over the above said plot and an iron gate was installed in the court yard. It has been further alleged that as per complainant her husband was serving in Indian Army and in the month of February 2003, accused No.1 and one Mohinder Pal son of Bela Ram tried to demolish the gate installed in the premises of complainant. Due to the above said act of accused No.1 the complainant and her husband were forced to file a civil suit in the Court at Ambala, which is still pending. It has been further alleged that on 28.03.2003 at about 9.10 a.m., the accused taking undue advantage of the absence of the complainant and her family members, demolished the gate forcibly and illegally and when the complainant came to know about the incident, she along with her husband rushed to the spot where Surjeet Singh son of Mansha Ram, Pal Chand son of Shankar met the complainant and told that the gate had been demolished by the accused and when the complainant enquired about the reasons for demolition of the gate, the accused used foul language and abused the complainant and threatened to kill the complainant and her family members. The matter was reported to the police but no action has been taken hence the present complaint has been filed.”

Learned SDJM, Naraingarh, after appreciating the evidence, acquitted the accused-respondents.

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 perusal of the record, especially the impugned judgment, I find that the findings given by learned SDJM, Naraingarh, are correct, as per evidence and law. In no way, the findings can be held as perverse. 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. Nothing has been pointed out as to how the findings given by learned Court below are perverse or against the law.

From the averments of the complaint itself, that on 28.03.2003 at about 9.10 a.m., the accused taking undue advantage of the absence of the complainant and her family members, demolished the gate forcibly and illegally and when the complainant came to know about the incident, she along with her husband rushed to the spot where Surjeet Singh son of Mansha Ram, Pal Chand son of Shankar met the complainant and told that the gate had been demolished by the accused and when the complainant enquired about the reasons for demolition of the gate, the accused used foul language and abused the complainant and threatened to kill the complainant and her family members, it is clear that complainant was not present and this occurrence has not taken place in the presence of the complainant. The complainant was informed by two witnesses i.e. Pal Chand and Surjit Singh, who told that accused demolished the gate. Both these witnesses have been examined by the complainant.

Learned Magistrate after going through the evidence on record found that a civil litigation was pending between the parties and that civil litigation culminated in favour of the accused and it was observed by learned Appellate Court that accused had not made any encroachment over the property in question. The Court also found that in the civil proceedings

in appeal, learned lower Appellate Court found that accused had constructed their houses, fixed doors, windows, ventilators etc. and were already in existence and no fresh construction was ever raised by any of the accused. Even the factum of removal of iron gate by accused has also not been accepted by learned Appellate Court. Rather, in the civil proceedings, the present complainant was restrained from installing the iron gate.

Learned Court below also found that the complaint was investigated by the police and the police has found that no cognizable offence has been committed. In the complaint to the police, there was no mention of any independent witness. The Court held that name of independent witnesses came firstly in the complaint made before the Court. The Court below further held that possibility of witnesses being procured cannot be ruled out. In view of the findings, by giving benefit of reasonable doubt, the accused were acquitted.

From the perusal of the impugned judgment, I find that the evidence has been appreciated in right perspective and reasonable doubt exists in the prosecution version. The names of independent witnesses have not been mentioned in the complaint given to the police. Their names have come first time while filing the complaint before the Magistrate. There is no reason or ground as to why the names of these persons, who told the complainant that gate was demolished by the accused, are not mentioned in the complaint given to the police, which was the first version.

In view of the above, I find that the impugned judgment dated 28.01.2012 passed by learned SDJM, Naraingarh, is correct, as per law and evidence and does not require any interference from this Court. No ground

application stands dismissed.

September 01, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No