

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

CRM-A-815-MA-2013 (O&M)

Date of decision : 25.07.2016

Chandgi Ram

...Applicant

Versus

Shish Pal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Shubham Kaushik, Advocate,
for Mr. Sudhir Kumar, Advocate,
for the appellant.

Mr. Karan Singh, Advocate,
for the respondents.

JITENDRA CHAUHAN, J.

The applicant seeks special leave to appeal against judgment dated 18.09.2010, passed by learned Additional Chief Judicial Magistrate, Kaithal (for short, 'the trial Court'), thereby, acquitting the accused-respondents in criminal complaint under Sections 325, 323, 379, 506 and 148 read with Section 149 of the Indian Penal Code (for short, 'the IPC'); and judgment dated 11.04.2013, passed by learned Additional Sessions Judge, Kaithal (for short, 'the first appellate court'), whereby, the appeal of the applicant-complainant has also been dismissed as not maintainable.

In brief, the complainant filed the complaint before Additional Chief Judicial Magistrate, Kaithal alleging that there was previous litigation between him and the accused. On 5.6.1996, the

complainant had gone to the Court of the then Id. Senior Sub Judge, Kaithal regarding dispute with the accused about the village street. Then he went to meet his commission agent, Sham Sunder Ashok Kumar in New Grain Market and took a sum of Rs.40,000/- from him. He put the amount in the dicky of his motor cycle and had left the shop for some work at about 6.30 P.M., when a jeep crossed him from the right side and stopped in the middle of the bridge of the drain. The six accused armed with sticks alighted from the jeep. When Banta and Jai Pal caught him, Shishpal and Veda inflicted stick blows on his face, nose and fore-head. The complainant raised an alarm which attracted the attention of Chanda Singh and Ram Dhari, both sons of Ram Kishan. On noticing them, the accused escaped from the spot taking away his watch and Rs.40,000/- from the motor-cycle. They also threatened to eliminate him in case the aforesaid civil suit was not withdrawn. Chanda Singh and Ram Dhari took the complainant to GH Kaithal, where they met Surender son of Roop Chand. Surender got the complainant admitted to the hospital. The complainant was radiologically examined at Kurukshetra on 7.6.1996. FIR No.196 dated 8.6.1996 under Sections 148, 506 and 323 read with Section 149 IPC, Police Station City, Kaithal was registered and the statement of the complainant was recorded by the police. However, no action was taken against the accused and a cancellation report was submitted. On receiving notice, the complainant appeared before the Area Magistrate

4.8.2003. Thereafter, the complainant filed the present protest petition on 11.3.2002.

On the basis of preliminary evidence led by the complainant, the respondents were summoned to face trial under Sections 323, 325, 311 and 148 read with Section 149 IPC. The accused stood trial and were ultimately acquitted by the learned trial Magistrate vide judgment dated 18.9.2010. The complainant preferred an appeal before the Additional Sessions Judge, Kaithal. The learned Additional Sessions Judge vide judgment dated 11.4.2013 held the appeal to be non-maintainable with an observation that if the appeal was not maintainable, there was no necessity to decide the case on merits.

Feeling aggrieved, the complainant has assailed both the judgments dated 18.9.2010 and 11.4.2013 before this Court.

On behalf of the appellant, it is contended that despite there being sufficient evidence on record, the learned Magistrate has wrongly acquitted the respondents. The complainant himself appeared as PW2 and proved the allegations as levelled in the complaint. Further he examined his son Sushil Kumar as PW1, Dr. C.R. Khatri, SMO as PW3 who radio-logically examined the complainant, PW4 Satish Kumar partner of firm of M/s Sham Sunder Ashok Kumar, PW5 Ramdhari and PW6 Dr. Sanjiv Goel who conducted the medical examination of the complainant. There is a sufficient evidence on record that PW4 Satish Kumar was partner of firm of M/s Sham Sunder Ashok Kumar. The

justice.

On the other hand, the learned counsel for the respondents/accused submits that the trial Court has rightly acquitted the accused/respondents of the offences. There is no evidence on record to connect the respondents with the alleged commission of crime. There is no credible evidence on record to prove that the alleged injuries were caused by the accused. He supports the judgments passed by the Courts below.

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

In this case, the occurrence is stated to have taken place on 5th of June 1996. It is the case of the complainant that while he was going to the Court complex, Kaithal, he was assaulted by the accused/respondents no. 1 to 6. The trial Court has observed that the version of the alleged assault was recorded by the complainant to the police after a gap of three days. An investigation was conducted and after finding no case against the accused, a cancellation report was presented before the Court. The complainant did not agree with the cancellation report and filed a protest petition which was treated as complaint thereafter, the proceedings ensued upon the complaint. The trial Magistrate has further observed that when the complainant went to the Doctor, he did not narrate the factum of assault to the treating doctor. Further, the factum of having brought money from the

commission agent was also not proved. The bahi of the commission agent bears the signatures of son of the complainant. It appears that the payment was made to the son of the complainant whereas, the case of the complainant is that the amount of Rs.40,000/- was handed over to him which was snatched away by the accused.. There is no evidence with regard to the company of the watch allegedly taken away by the accused. There is opinion of the doctor that the injuries could be caused due to a fall.

As per MLR and statement of CW6, Dr.Sanjiv Goel, the complainant was medically examined by him and he was brought by one Mahavir and the complainant was conscious at that time, whereas, the complainant has stated that he was brought to the hospital by Chanda Singh and Ramdhari, sons of Ram Krishan, brother of the complainant. Dharambir @ Mamu son of Pirthvi Raj and Mahavir who are residents of the same village, stated during the investigation of the case that they were going from Kaithal to Khurana and the complainant was going ahead of them. The complainant received injuries by falling from the motor-cycle and they helped him after his fall and thereafter the complainant started the motor cycle and proceeded towards Kaithal. Not only that, this Court, in a separate case in CRM-7838-M vide order dated 8.1.2002, directed the Superintendent of Police, Kaithal for initiation of proceedings under Section 182 of Cr.P.C. against the complainant in a false case registered by the complainant

The conduct of the complainant speaks a lot. This Court does not find any infirmity or perversity calling for interference.

Consequently, the application for special leave to appeal is dismissed.

25.07.2016
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No