

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

**CRM-A-32-MA of 2016 (O & M)
Date of decision : 18.3.2016**

Vishawanath

.....Applicant

v.

Deepak and others

.....Respondents

**CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Ashwani Bhardwaj, Advocate
for the applicant

RAMENDRA JAIN, J.

CRM No. 1064 of 2016 :

Heard. Sufficient cause has been shown for condonation of delay in applying for leave to appeal. The application is, therefore, accepted. The delay of 2 days in applying for leave to appeal is condoned.

CRM-A-32-MA of 2016 :

The instant application under Section 378(4) Cr.P.C. has been filed by complainant seeking leave to file appeal against judgment of acquittal dated 17.10.2015 acquitting respondents No.1 to 4 under Sections 452, 323, 326 and 506 read with Section 34 IPC.

The applicant-complainant initially on 1.11.2012 made a statement to the police that due to previous civil litigation, accused-respondents No.1 to 3 had caused injuries on his back with their respective lathis in the Court compound, Bhiwani. Respondent No.4 attempted to stab him with knife, but he managed his escape. However, he suffered a knife injury on his left little finger. His alarm attracted advocate Ajay Sharma on the spot. On seeing him, all the respondents-accused fled away.

On the basis of above statement, FIR was registered. Criminal law was set into motion. During investigation, when police did not find any evidence against the respondents-accused, it filed a cancellation report. The applicant-complainant challenged the same by way of protest petition. Consequently, the same was treated as a complaint case.

After recording complainant's evidence, statements of accused-respondents No.1 to 4 under Section 313 Cr.P.C. were recorded putting entire incriminating material came on record against them, to which they denied and pleaded their false implication. In defence, they examined DW1 Rajesh Kumar and DW2 Inspector Devender Singh.

After hearing learned counsel for both the sides and scanning the evidence on record, the learned trial Court acquitted respondents No.1 to 4.

Learned counsel for the applicant contended that the impugned judgment of the learned trial Court is based on surmises and conjectures. The learned trial Court has failed to consider that there was active participation of respondents No.1 to 4 in the commission of crime. They have wrongly been acquitted without appreciating the fool proof evidence. The deposition of the applicant was fully corroborated by eye witness Ajay Sharma, Advocate. Dr.

Anil Sharma and Dr. Ramesh Lamba had also supported the prosecution case.

After giving our thoughtful consideration to the above submissions, we find no merit in the instant application for the reasons to follow.

- (i) It is a matter of common knowledge that a court compound always remains over crowded throughout the day. Thus, it does not appeal to the reason that the respondents-accused could succeed in fleeing away. Even the police was not informed promptly, though, admittedly, it always remains present there in plenty. Rather, the police had met the complainant in the hospital in the evening hours.
- (ii) PW1 Dr. Ramesh Lamba, who medico legally examined the applicant-complainant in after charge evidence and CW2 Dr. Anil Sharma, who proved his report Ex. C4 in pre charge evidence, have testified that possibility of injury No.1 i.e. fracture sustained by him by self infliction or self sufference cannot be ruled out. CW2 Dr. Anil Sharma has further clarified that possibility of fracture of little finger of complainant by fall on the hard surface also cannot be ruled out.
- (iii) Apart from the testimony of the complainant, there is no other credible corroborative witness. PW3 Ajay Sharma, an eye witness, in his examination in chief has merely testified that by the time, he reached the chamber of the complainant after hearing the noise, the accused had already left the spot along with their respective arms. Meaning thereby PW3 Ajay Sharma had not witnessed the incident, rather he had merely seen four persons going from the chamber of the complainant.

(iv) The photos mark C4/B to C4/F allegedly taken by Advocate Ajay Sharma are also doubtful as in none of the same, chamber number, law books, etc. are visible.

(v) The call details relied upon by the applicant-complainant do not establish the presence of respondents No.1 to 4 in the court compound Bhiwani, rather, their presence is proved at Village Khairu. This fact in itself is sufficient to hold that none of the respondents was present at the court compound Bhiwani on the date and time disclosed by the applicant-complainant.

In view of the discussion above, allegations of the complainant against the accused are not being proved beyond shadow of doubt, more particularly, when there was previous enmity in between them due to pendency of a civil case regarding some property dispute.

Learned counsel for the applicant-complainant has miserably failed to put any dent in any of the findings of the learned trial Court.

In view of the above discussion, the instant application being completely devoid of any merit is dismissed. Application for leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

18.3.2016
Ashwani