

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

**CRM No.25899 of 2014 and
CRM No.33734 of 2016 in/and
CRM No.A-1343-MA of 2014 (O&M)
Date of decision: October 25, 2016**

Bharat Singh

...Applicant

Versus

Malti Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Diwan S. Adlakha, Advocate
for the applicant.

INDERJIT SINGH, J.

CRM No.25899 of 2014

This is an application under Section 5 of the Limitation Act for condoning the delay of 640 days in filing the application seeking leave to appeal.

It is stated in the application that after passing of the judgment dated 20.09.2012 by learned Judicial Magistrate Ist Class, Faridabad, applicant had filed criminal appeal before the Sessions Court, Faridabad, which was withdrawn being not maintainable and therefore, the delay of 640 days has occurred in the filing the application under Section 378(4) Cr.P.C. before this Court.

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 640 days in filing the application seeking leave to appeal, is condoned.

CRM No.33734 of 2016

Dismissed as not pressed.

CRM No.A-1343-MA of 2014

Applicant-Bharat Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Malti Devi and other respondents, challenging the impugned judgment dated 20.09.2012 passed by learned Judicial Magistrate Ist Class, Faridabad, 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 learned trial Court has not properly appreciated the evidence produced by the prosecution and has therefore caused the miscarriage of justice. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Bharat Singh filed a complaint against Smt.Malti Devi and other accused under Sections 323, 504, 506 and 34 IPC. The brief facts of the complaint as noted down in the order dated 20.09.2012 passed by learned JMJC, Faridabad, are as under:-

“2. Brief facts as mentioned in the complaint by the complainant are that the accused are his neighbours and are always on the lookout of taking forcible possession of the property of the complainant. It has been stated that there is a dispute regarding Chabutra between the complainant and

Sh.Ram Parsad who is the father of accused nos.2, 4 and 5 and husband of accused no.3 and an injunction order has also been granted by the civil court in this regard. It is due to this reason that accused keep on abusing the complainant and his family members in one way or the other. It is stated that on 3.3.2002, at about 3.45 P.M. the complainant, and his wife Sharbati were taking measurements of their property when the accused came to the spot with an intention to cause injuries to the complainant and his wife. The accused caught hold of Sharbati. The accused Malti Devi assaulted Sharbati with a danda on her left hand and further slapped her as a result of which the ear rings of Sharbati fell down which were picked up by the accused Malti. It has been averred that the other accused also assaulted Sharbati. It is stated that Malti Devi further hit a danda on the back of Sharbati and later went to her house along with ear rings of Sharbati. When the complainant tried to save his wife, accused Neeraj, Omwati and Hitesh aimed their sticks/lathies towards the complainant but the complainant ran away towards his house to save himself. The complainant raised an alarm on which Babu Lal and Dharambir came to the spot and saved the wife of the complainant. The complainant, thereafter, took his wife to the police station but the in-charge of the police station did not register any FIR on the statement of the complainant and only proceeded against some of the accused under sections 107/151 Cr.P.C. It has been submitted that instead of taking action against the accused, a case under Sections 323/325 IPC was registered against the complainant, his son Mukesh and Sharbati.”

At the time of framing the charge, no charge is made out and the accused were discharged by learned JMIC, Faridabad, vide order dated 20.09.2012. A revision was filed before learned Sessions court, which was withdrawn by the present applicant being not maintainable.

As the complaint is triable as summons case, therefore, it is now settled law that any discharge of the accused after summoning of the accused will amount to acquittal of the accused.

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

From the record, I find that as per the averment in the

complaint, only Malti Devi assaulted Sharbati with danda on her left hand and further slapped her. Accused Neeraj, Omwati and Hitesh, were stated to be armed with sticks/lathies and they only aimed their sticks towards the complainant. General allegations are levelled in the complaint against other accused.

The perusal of the record shows the occurrence took place on 03.03.2002 and the present complaint was filed on 09.04.2003 i.e. after delay of one year and one month, which has not been explained by the complainant and such a long delay is fatal to the complainant's case. It is in the complaint itself that police has not registered the FIR and proceeded against some of the accused under Section 107/151 Cr.P.C. Then the complaint should have been filed by the complainant at that very time without unnecessary delay. So, the delay has not been explained at all.

Secondly, I find that it is admitted at the time of arguments that accused side got registered the FIR in which the complainant side has been acquitted. The judgment in that case regarding FIR No.253 dated 16.03.2002, has been placed on the record, which shows that accused party has also suffered injuries. Those injuries have not been explained in the present case.

Furthermore, as already said, Neeraj, Omwati and Hitesh aimed only sticks and no offence is made out against them. Moreover, as regarding other accused namely Mamta, no attribution is there. The general allegation that other accused also assaulted, cannot be believed. No role is attributed to other accused except Malti Devi.

In view of the above discussion, I find that the impugned order dated 20.09.2012 passed by learned JMIC, Faridabad, is correct, as per

evidence and law and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

October 25, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No