

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-76-MA of 2016

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Date of decision:28.11.2016

Kuldeep

...Applicant

v.

State of Haryana and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Manoj Chahal, Advocate for the applicant.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) and (5) Cr.P.C. against State of Haryana and others-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 16.12.2015 passed by learned Sessions Judge, Rohtak, whereby in the case FIR No.124 dated 24.4.2014 registered for the offences under Sections 353 and 323 IPC at Police Station, Meham, the accused-respondents No.2 to 4 have been acquitted.

It has been mainly submitted in the application that the applicant is filing the accompanying criminal appeal against the judgment of acquittal which is likely to succeed as per grounds mentioned therein. It has been further stated that a strong *prima facie* case is made out for the grant of special leave to appeal against the order of acquittal. It has been prayed that

the application may be allowed and in the interest of justice leave to file appeal may be granted against the judgment of acquittal.

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

From the record, I find that challan had been presented by the Police of Police Station, Meham in FIR No.124 dated 24.4.2014 registered for the offences under Sections 353 and 323 IPC against Karan Singh, Charan Singh and Sewa Singh.

The brief facts as mentioned in the judgment dated 16.12.015 passed by the learned Sessions Judge, Rohtak, are as under:-

“Case of the prosecution, as unfolded during trial, is that Ramphal accused, since deceased, was in unauthorized occupation of panchayat land situated within the revenue estate of Village Kharkhara, Tehsil Meham, District Rohtak. He was served with a notice under Section 24(1) of the Panchayati Raj Act on 30.4.2011 and again on 12.5.2013 to vacate the same, but he did not, rather, filed a civil suit against the Gram Panchayat with an application for interim injunction. His application for interim injunction was dismissed by the Court vide order dated 15.7.2013, but still he did not vacate the land. Therefore, Sub Divisional Magistrate (SDM), Meham deputed Block Development & Panchayat Officer (BD&PO), Meham to get the possession of the land with police help. It was in pursuance of said order, on 10.8.2013 a tractor trolley loaded

with bricks was sent by complainant Kuldeep PW2, who was Sarpanch of the Gram Panchayat for being unloaded on said land as a *Chaupal* was to be constructed there by the Gram Panchayat, but Ramphal accused did not allow the bricks to be unloaded. When the complainant was informed about the same, he went to the spot and decided to get the bricks unloaded in the adjoining plot, but Ramphal accused, his accused sons Karan Singh and Charan Singh, wife and Sewa Singh accused who were present over the land objected for the bricks to be unloaded even in the adjoining plot and extended a threat to the complainant. Thereafter, all the accused bounced upon the complainant and gave him kicks and fist blows. At that time, the complainant was carrying his licensed revolver. They also snatched his licensed revolver and fired a shot from the same which hit the ground. He informed about the occurrence to BD&PO, Meham and then went to the police station to lodge the complaint against the accused, but he was surprised to know that a false case under Section 307 of the Indian Penal Code and 27 of the Arms Act had already been registered against him by the police against FIR No.265 dated 10.8.2013. Therefore, he made representations to different authorities to get the case registered against the accused and when no action was taken on the representations, he filed a private complaint Exhibit PB against all the five accused for the offence under

Sections 353, 323, 447, 395, 211, 120-B of the Indian Penal Code. Said complaint was sent by the learned Area Magistrate to police station for registration of a case and investigation as envisaged under Section 156(3) Cr.P.C. It was in compliance of said order, present case was registered against FIR Exhibit PA.”

The learned Sessions Judge after discussing the evidence produced by the prosecution acquitted the accused (respondents No.2 to 4 herein).

A perusal of the record shows that as per the prosecution Ramphal-father of the accused Karan Singh and Charan Singh was in unauthorized occupation of Panchayati land and he was served with a notice under Section 24(1) of the Panchayati Raj Act (hereinafter referred to as 'the Act') on 30.4.2011 and again on 12.5.2013 to vacate the same. The civil suit was also filed along with interim injunction, but that application was dismissed. Sub Divisional Magistrate, Meham, deputed Block Development & Panchayat Officer to get the possession of the land with the Police help. A perusal of the record shows that no document was placed on record to show that interim injunction application was dismissed by the Civil Court. No order under Section 24(1) of the Act had been placed on the record. No order of the Sub Divisional Magistrate deputing the Block Development & Panchayat Officer to get possession of the land with Police help, was placed on the record. There is also nothing on the record to show that any Police was present for taking the possession or BDPO was present. Rather, a perusal of the facts of the case itself shows that no proceedings have been placed on record to take the possession from Ramphal or the accused as per

law. Rather, as per prosecution version, the complainant had gone to the disputed land with tractor trolley full of bricks for being unloaded there with a view to dispossess Ramphal and when the accused resisted, the complainant, who is Sarpanch, along with the revolver reached there. The Court after discussing all these facts and the evidence on record found that a reasonable doubt exists in the prosecution case and the prosecution has failed to prove the guilt of the accused beyond doubt. The occurrence is not in dispute. It is admitted fact that a shot had been fired from the licensed revolver of the complainant and the fired bullet was found embedded in the earth on the place of occurrence. The case of the prosecution is that a shot was fired by the complainant with the barrel downward just with the intention of intimidating Ramphal accused. It is a cross-version case and the FIR for the offences under Section 307 IPC and Section 27 of the Arms Act were also registered against the complainant party.

At the time of arguments, it is admitted that the complainant party had been convicted under Section 506 IPC and Section 27 of the Arms Act.

From the record, I find that, in no way, the findings given by the learned lower Court can be held as perverse or against the evidence. Nothing has been pointed out as to which material evidence has been misread by the Court below and as to which material evidence has not been considered by the Court below. There is also nothing on the record to show as to what illegality has been committed by the Court below.

Therefore, I find that the findings given by the Court below are

correct as per evidence and law which do not require any interference from this Court and the same are upheld. In no way, the findings can be held as perverse.

Therefore, I do not find any ground to grant leave to file appeal. Consequently, finding no merit in the criminal miscellaneous application filed under Section 378 (4) & (5) Cr.P.C. seeking leave to file appeal is dismissed.

November 28, 2016.

(Inderjit Singh)
Judge

hsp