

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-82-MA-2016

Date of decision: 29.02.2016

Mukhtiar Kaur

..... Applicant

Versus

Jasbir Kaur and others

..... Respondents

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

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. D.S. Malwai, Advocate
for the applicant.

RAMENDRA JAIN, J.

The instant application has been filed by the applicant, seeking leave to file the accompanying appeal against the judgment dated 16.11.2015, passed by the learned Additional Sessions Judge, Sangrur acquitting the respondents.

2. Briefly stated, respondent No. 1-Jasbir Kaur was married to Hari Singh, brother of the applicant. After the death of Hari Singh, respondent No. 1 including her children inherited his properties, but she fraudulently also got mutated the estate of Jarnail Singh (another brother of the applicant) in her name, who died un-married. Consequently, the applicant along with her brothers and sister Bant Kaur filed Civil Suit

No. 78 dated 04.03.2002 for cancellation of mutation in favour of the respondents qua the properties of Jarnail Singh deceased. The same was decreed vide judgment dated 02.06.2005. Resultantly, the mutation sanctioned in the name of respondent No. 1 and others was cancelled. Having grudge with the above state of affairs, respondent No. 1 started threatening Jang Singh, brother of the applicant with dire consequences for getting the mutation set aside. Jang Singh was unmarried. He moved various applications to the higher officers against the respondents, but in vain. Around 2.00 P.M. on 29.11.2015, the respondents kidnapped Jang Singh. Till date his whereabouts were not known. The applicant reported the matter to the police, but it did not take any action. Hence, the applicant approached this Court and on the direction of this Court, FIR No. 181 dated 14.12.2007 under Sections 364/34 IPC Police Station Bhawanigarh, was registered. The police again did not take any action against the respondents for kidnapping Jang Singh. Consequently, the applicant filed a private complaint under Sections 364/506 read with Section 34 IPC against the respondents in the Court of learned Illaqa Magistrate.

3. On perusing preliminary evidence, the learned Illaqa Magistrate, summoned the respondents to face trial under Section 364 read with Section 34 IPC vide order dated 06.06.2014.

4. On commitment of the case to the Court of Sessions, the learned Additional Sessions Judge, Sangrur framed charges under Sections 364/34/506 IPC against the respondents to which they pleaded not guilty and claimed trial.

5. The prosecution in support of its case examined as many as 4 witnesses. In defence, the respondents examined DW-1 Karnail Singh.

6. After hearing learned counsel for the parties and scanning the evidence brought on record, respondents No. 1 to 4 were acquitted vide the impugned judgment.

7. Learned counsel for the applicant contended that the impugned judgment is based on surmises and conjectures. Learned trial Court has misread and misconstrued the evidence while acquitting the respondents. It did not consider that the whereabouts of Jang Singh after his kidnapping by the respondents were not traceable till date. The learned trial Court has erred in not appreciating the fact that Jang Singh himself had moved various applications before the Government functionaries about apprehension of his abduction by the respondents. The learned trial Court also failed to notice that after losing the battle on civil side, the respondents had a very strong motive to kidnap and finish Jang Singh, because he had deprived them from the properties of deceased-Jarnail Singh by getting the mutation cancelled in favour of respondent No. 1 and others. The learned trial Court has also failed to appreciate the statement of PW-1 Jagtar Singh and PW-3 Mithu Singh, corroborative to each other, proving guilt of the respondents.

8. After giving our thoughtful consideration to the submissions made by learned counsel for the applicant, we find no merit in the instant application for the reasons to follow:-

- (i) The entire case of the applicant revolves around the statement of PW-1 Jagtar Singh. In his

cross-examination, he admitted that it was only the applicant-complainant, who had told him that respondent No. 1 was threatening Jang Singh to kill him. On 29.11.2005, the respondents did not take Jang Singh with them at any time in his presence nor he had seen them with Jang Singh on that day. He went to the extent of saying that he had deposed against the respondents under the threat of the applicant-Mukhtiar Kaur that in case, he would not depose according to her commands, in that eventuality, she would implicate him in a false case. He also clarified that it was only the applicant, who had told him that on 29.11.2005 she had seen Jang Singh with the respondents. Jang Singh was addicted to many vices. He used to live alone in the house as he was a bachelor.

From the above, it is clearly evident that the entire statement of PW-1 Jagtar Singh was based on hearsay under the threat of the applicant-complainant. He himself had not lastly seen Jang Singh in the company of the respondents. It is also pertinent to mention here that PW-1 Jagtar Singh was declared hostile. In his cross-examination by the learned Addl. P.P., nothing favourable to the prosecution could be elicited from his mouth.

- (ii) The another material witness introduced by the applicant was her own son PW-3 Mithu Singh. He was not shown in the list of witnesses filed by the applicant in her complainant on 08.05.2008. The occurrence allegedly took place on 29.11.2005. During this period of 2½ years PW-3 Mithu Singh did not come into picture at any point of time i.e. (a) at the time of making complaint to the police, (b) approaching this Court seeking direction for registration of FIR, and (c) till the date of filing of private complaint. He was introduced and called in the witness-box on the application under Section 311 Cr.P.C. moved by the learned Addl. PP assisted by learned counsel for the applicant. Hence, his introduction and examination as PW-3 has rightly been declared by the learned trial Court as an after thought to fill the lacuna in the case, when found that PW-1 Jagtar Singh did not support the prosecution story.

That apart, PW-3 Mithu Singh in his statement testified that he accompanied Jagga Singh to the police station and requested the police to record his statement, but it only recorded the statement of Jagga Singh. However, when he was questioned as to why he kept mum for such a long period and did not move

any complaint before the higher authorities to complain about the above conduct of the police officials, he could not reply satisfactorily, rather simply admitted that he did not take any such step. He also admitted that he did not inform the police about kidnapping of Jang Singh on 29.11.2005 or thereafter and even did not try to stop the respondents from taking Jang Singh. He further admitted that he used to accompany applicant-Mukhtiar Kaur to CIA Staff, office of the Senior Superintendent of Police, Sangur and to this Court during last 10 years.

Keeping in view the above deposition and admissions of PW-3 Mithu Singh, the learned trial Court has rightly observed that he was deposing falsely to favour the applicant, though he did not witness the occurrence.

- (iii) The entire case of the prosecution is based on circumstantial evidence. Since, last seen evidence in this case is lacking and is based on hear say, therefore, the learned trial Court has rightly acquitted the respondents.
- (iv) Karnail Singh, younger brother of Jang Singh as DW-1 has totally belied the prosecution story. He had specifically deposed that about 10 years ago his brother Jang Singh had gone from the village on his

own and till date he has not returned. His sister applicant-Mukhtiar Kaur had obtained the thumb impressions of Jang Singh on many papers and got registered a false case against the respondents in Police Station, Bhawanigarh regarding his kidnapping. All the respondents were innocent. The police had also found the respondents innocent during investigation of FIR No. 181 dated 14.12.2007.

9. No other point was urged before us.

10. From the above discussion, it can safely be said that the applicant-complainant had miserably failed to prove its case beyond any shadow of doubt against the respondents and, thus, they have rightly been acquitted by the learned trial Court. The instant application being completely devoid of any merit is dismissed. Special leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

February 29, 2016

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