

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1682-MA of 2014(O&M)
Date of decision: January 12, 2016

Tarsem Lal

...Applicant

Versus

Kimti Lal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vivek Salathia Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Tarsem Lal has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Kimti Lal and other respondents, challenging the judgment dated 12.08.2014 passed by learned Sub Divisional Judicial Magistrate, Mukerian, whereby accused-respondents were acquitted of the charges.

It is mainly stated in the application that accompanying appeal is likely to succeed on the grounds taken therein. It is further stated that learned trial Court has committed an error in acquitting the respondents despite the fact that the respondent had destroyed the khokha of the appellant and have taken all the goods placed inside the khokha by loading in a vehicle. It is also stated that trial Court while acquitting the respondents has ignored in totality the fact that

the applicant has proved the case beyond any doubt.

As per the record, the complainant Tarsem Lal filed a complaint against accused Kimti Lal, Padam Kumar and Komal Kumar under Sections 457, 427, 506, 380 and 120-B IPC. As per complainant's version, he carried on the business of cycle repairs and manufacturing of iron gates etc. His father and his real uncle have been running the shop in iron vessel (khokha) constructed upon the land measuring approximately 1½ marlas. Few days back, uncle of the complainant went to Delhi and his father was bed ridden due to severe illness. The land on which iron vessel has been constructed is in possession of the complainant's grandfather, father of the complainant and his uncle and was constructed over the last 50 years. It is also the case of the complainant that accused No.1 and 2 claim themselves to be owner of the land over which iron vessel has been constructed. On 13.10.2009, at about 12.00 to 12.30 A.M. at night, Harish Kumar was coming back to complainant's house. While he was crossing Narindra Hospital, he saw that accused Kimti Lal, Padam Kumar along with some other persons holding iron rods etc. were destroying the iron vessel and loading in a jeep the goods placed inside the iron vessel. Thereafter, Harish Kumar rushed to the house of the complainant and disclosed him entire episode. Then, complainant and Harish Kumar went to the spot and saw that the destroyed vessel and goods inside the vessel such cycle, rickshaw etc. had been taken away by accused persons.

Learned SDJM, Mukerian, vide impugned judgment dated

12.08.2014, after appreciating the evidence, acquitted the accused-respondents.

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

From the record, I find that the learned trial Court firstly found that complainant is not an eye witness in the present case and his statement is only hearsay and he has not seen the accused on the spot. Harish Kumar is the only eye witness to the occurrence. Learned trial Court, further held that CW-2 Harish Kumar, who is stated to be eye witness, has nowhere named accused Komal Kumar. Even in the complaint filed by the complainant, there is no allegation against Komal Kumar. During the cross-examination, Harish Kumar has categorically admitted that accused Komal Kumar was not present at the time of occurrence. Therefore, there being no evidence against Komal Kumar, he was acquitted.

As regarding the evidence against other accused, the trial Court held that occurrence took place at 12.00-12.20 A.M. in the intervening night of 12/13.10.2009. Harish Kumar, in cross-examination has deposed that he closes the shop of complainant at about 8.00-8.30 P.M. and his village is at a distance of about 10 kms. The Court held that presence of Harish Kumar on the spot is doubtful, as to what he was doing at that time at the spot.

Furthermore, I have gone through the statement of CW-2 Harish Kumar in the lower Court record. He has not deposed any material facts in the chief-examination. He has nowhere stated that he

has seen the accused loading the articles i.e. cycle, rickshaw etc. in the tempo and taking it from the spot. He has nowhere stated that iron vessel was demolished by the accused. CW-2 also nowhere stated in chief examination whether there was any light at the spot or whether he had seen the accused in the light of any bulb etc.

In view the above facts, the Court doubted the presence of Harish Kumar at the spot. Further, the Court has correctly held that neither father nor uncle of the complainant have been examined in this case. No evidence has been produced on the record regarding the possession of father, grandfather or uncle of the complainant.

Keeping in view the above facts, I find that the findings given by the trial Court are correct. Learned trial Court has correctly appreciated the evidence in right perspective. Nothing has been argued as to which material evidence has not been considered or which material evidence has been misread by the Court below. The judgment dated 12.08.2014 passed by learned SDJM, Mukerian, is correct, as per law and evidence and does not require any interference from this Court.

Keeping in view above facts and circumstances, I find that no ground is made out to grant permission for leave to appeal and therefore, the present application stands dismissed.

January 12, 2016
Vgulati

(INDERJIT SINGH)
JUDGE