

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-277-MA of 2014

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Date of decision:21.9.2016

Jaswinder Singh

...Applicant

v.

State of Punjab and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. H.P.S. Ghuman, Advocate for the applicant.

Ms. Shivali, Assistant Advocate General, Punjab for the respondent-State.

Mr. Mahesh Dheer, Advocate for respondents No.2 and 3.

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Inderjit Singh, J.

This criminal miscellaneous application has been filed by the complainant/applicant under Section 378(4) Cr.P.C. against State of Punjab and others for grant of leave to appeal against the judgment dated 15.11.2010 passed by learned Judicial Magistrate Ist Class, Nabha, whereby the DDR No.14 dated 27.3.2007 for the offence under 182 IPC registered at Police Station Bhadson has been dismissed and the accused/private respondents have been acquitted.

It has been mainly stated in the application that the accompanying appeal is being preferred by the appellant against the

judgment dated 15.10.2010 passed by learned Judicial Magistrate Ist Class, Nabha, which is likely to succeed on the basis of grounds taken therein. It has been stated that the appeal has merit in the matter which is required to be appreciated and appeal is required to be entertained. It has been prayed that leave to file appeal may be granted.

Notice of motion has been issued in this case.

Ms. Shivali, learned Assistant Advocate General, Punjab, has put in appearance on behalf of respondent No.1-State and Mr. Mahesh Dheer, learned Advocate has appeared for respondents No.2 and 3 and contested this application.

I have heard learned counsel for the applicant as well as learned State counsel and learned counsel for respondents No.2 and 3 and have gone through the record.

From the record, I find that in the present case a calendera has been filed under Section 182 IPC by SHO, Police Station, Bhadson.

The brief facts of the case are that on 22.9.2006, Dr. Ranjit Singh, M.O., P.H.C. Bhadson sent MLR of injured Lovelesh Kumar to Police Station, Bhadson, on which ASI Karam Singh reached PHC Bhadson and recorded the statement of Lovelesh Kumar to the effect that he was working as a labourer in Chandi Gram Udyog Bhadson. On 21.9.2006 at around 11.00 p.m., he was working in the factory, when he heard noise of barking dog and he had gone outside and seen that Narinder Singh alias Billu, Jaswinder Singh and one more person, were untying the buffaloes and on the road, three Wheeler (Tempo) was parked. As he had spoken, they

told him to run away or he would be killed and factory be put on fire. He told them that he must call his employer on phone, then he would go. Then Billu gave 'danda' blows on his buttock and one danda blow was given on his right ankle. Then he made phone call to his employer Dharma Singh and the accused by abusing him had gone away and while going gave injury on his ankle. He and his companions Shivrath, Ram Chander, Ram Sarup and Naresh, who were sleeping in the factory, woke up. In the meantime, his employer along with 2-4 persons came on the spot and he narrated them the whole story and the buffaloes were tied after searching with the torch light from the field.

The above statement was read over to him and he signed it after admitting it to be true. From the MLR, it was found that there were two injuries and both were blunt in nature and no cognizable offence was made out and DDR No. 12 dated 22.9.2006 was lodged. The statements of accused Narinder Singh etc. were recorded during the investigation. Further investigation was conducted. Later on, it was found that the complaint filed by Lovelesh Kumar was false. Earlier on the statement of Narinder Singh, FIR No.74 dated 25.8.2006 for the offences under Sections 341, 323, 506 and 149 IPC at Police Station Bhadson was registered. These facts have been taken as noted down in the judgment dated 15.11.2010 of the learned Judicial Magistrate Ist Class, Nabha.

The learned Judicial Magistrate Ist Class, Nabha, after appreciation of the evidence, held that though all the PWs have corroborated the prosecution story but the presence of PW-1 Narinder Singh

and Jaswinder Singh at the spot of occurrence is not proved as they were present at Gian Sagar Hospital on the day of occurrence. The Court below held that the most fatal lucuna, which strikes at the root of the prosecution case, is that complaint under Section 195 Cr.P.C. had not been filed, which is mandatory as per law, as no cognizance can be taken of offences under Sections 172 to 188 IPC without complaint filed under Section 195 Cr.P.C. It has been held that hence the entire prosecution case falls flat on this score alone. In the absence of said complaint, no cognizance of the offence under Section 182 IPC can be taken by the Court. It has been held that the accused are acquitted.

The appeal was filed before the learned Sessions Judge, Patiala, and the same was also dismissed as withdrawn.

At the time of arguments, learned counsel for the applicants has not stated anything that claendera can be presented under Section 182 IPC without the complaint as required under Section 195 Cr.P.C. The learned counsel for the respondents has placed reliance on the judgment of this Court in Randhir v. State of Haryana and others, 2004 Cr.L.J. 479, wherein it has been held by this Court that the question whether the Superintendent of Police is competent to file complaint or it could be filed even by a person subordinate to him has been subject matter of the complaint filed by the public servant concerned i.e. by the Superintendent of Police to whom false grievance is alleged to have been made by the accused, in which it has been held as under:

“5. The question whether the Superintendent of Police is

competent to file complaint or it could be filed even by a person subordinate to him has been subject-matter of consideration in the cases of Harbans Singh (1991 (3) Rec Cri R 113) (supra); Davinder Singh Kapoor v. State of Punjab (1991 2 LR 194) and Malkiat Singh (1999 (1) Cri LJ 702) (supra). It has been held in all the aforementioned judgments that the complaint is required to be filed by the public servant concerned i.e. by the Superintendent of Police to whom false grievance is alleged to have been made by the accused. In those cases also, it was the Station House Officer who had filed the complaint whereas the false grievance is alleged to have been made to the Superintendent of Police. Therefore, there is no room to accept the prayer made by the petitioner. Even otherwise, the public officer is an aggrieved party who should have filed an appeal or revision. Therefore, there is no merit in the instant petition and the same is liable to be dismissed.”

I have gone through the law laid down in the above judgment, which fully applies in the present case.

Therefore, from the above, I find that the judgment dated 15.10.2011 passed by the learned Judicial Magistrate Ist Class, Nabha, is correct as per evidence and law and does not require any interference from this Court.

In view of the above discussion, I do not find any ground to grant leave to file appeal. Therefore, finding no merit in the criminal

miscellaneous applications filed under Section 378(4) Cr.P.C. seeking leave to file appeal, the same is dismissed.

September 21, 2016.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No