

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-499-MA of 2015

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Date of decision:23.2.2016

Mangat Ram

...Applicant

v.

Vinod Kumar and others

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sanjay Jain, Advocate for the applicant.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Vinod Kumar etc.-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 14.1.2015 passed by learned Judicial Magistrate Ist Class, Ambala, whereby the complaint filed by the complainant/applicant for the offences under Sections 506, 323, 452, 427, 148, 380, 149 and 120-B IPC read with Sections 3 and 4 of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as 'the Act') has been dismissed and the accused/respondents 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 the learned trial Court has wrongly and illegally acquitted the accused/respondents from the charges levelled against them, hence, leave to file appeal is liable to be granted. 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 Mangat Ram-complainant filed complaint against Vinod Kumar and 23 other persons for the offences under Sections 506, 323, 452, 427, 148, 380, 149 and 120-B IPC read with Sections 3 and 4 of the Act.

The brief facts as stated in the judgment of the learned trial Court are as under:-

“Briefly facts of the complaint are that the complainant is permanent resident of village Toba, Tehsil & Distt. Ambala and is a “Harijan” by caste. He is owner in possession of a bara situated in Village Toba near Shiv Mandir since the time of his ancestors. In the intervening night of 3/4.05.2006, when the complainant was constructing his house on the said bara, the accused persons, in his presence, demolished his house, which was under construction. He could not stop the accused persons, who were many in numbers and were armed with deadly weapons. They also stolen 30 bags cement, two quintals of

Sariya, one Tasla, one Big iron bucket and one iron pipe of 2” (Balli). In the morning of 04.05.2006, he had moved a complaint to the Police of Police Post Saha (now Police Station Saha), who has called all the accused persons. However, with the intervention of the Police and respectable of the village, matter was compromised between the parties and the compromise was reduced in a writing. In the said compromise, the accused persons had admitted that the bara in dispute measuring 59' x 33' belongs to the complainant, who was in possession of the same and they had agreed to help the complainant to reconstruct his house there. This compromise was witnessed by Shish Pal Sarpanch, Sube Singh Panch, Phool Singh Panch and many other respectable of the village. However, in the morning of 05.05.2006, when the complainant along with his sons Ashwani & Rajesh and Mason Ram Nath @ Ramesh and labourer went to the spot for reconstruction of his house and started reconstructing his house, all the accused persons armed with deadly weapons forcibly entered in his Bara and tried to restrain him. Kaka, Sanju, Om Vir, Birj Pal, Kala and Jitender along with others asked him “Jab Hamne Tumara Makan Gira Diya Tha, To, Sale Chamar Tere Ko Samaj Nah Aatta, To Aaj Tu Ye Makan Kaise Bana Sakta Hai”. Meanwhile, accused Surinder, Nittu, Ram Pal, Sahab Isham, Shiv Kumar, Ram Kumar, Rakesh and Deepak including others

threatened him in one tone “Tum Chamar Gittal Bahan Choud Sale Gittal, Sale Chamar Agar Tumne Dubara Makan Banane Ki Ya Bar Mai Khusne Ki Kosis Ki, To Hum Tumari Tange Tor Denge”, Meanwhile, accused Brij Pal and Om Vir slapped him and also gave kick blows to him. When complainant requested them to allow him to reconstruct his house as per the compromise, accused Brij Pal, Surinder son of Karam Singh, Nittu, Surinder son of Banarasi, Shiv Kumar, Vikram, Ram Kumar, Ram Pal, Brij Pal, Parmod, Saha, Jatinder, Sher Singh and Isham threatened him and his sons and the labourers “Tum Ye Dande Dekh Rai Ho, Sale Chamar, Aaj Ye Tumne Akhri Chetavani Hai, Ki Aggar Aaj Ke Bad Tum Sale Chamar Is Bare Dikhai Diay to, Tumne Jan Se Mar Denge”. This threat was administered to the labourers also. Accused persons intentionally with a common intention called the complainant “Chamar” and “Gittal” just to lower down his reputation in eyes of himself as well as his sons and labourers. On the next morning i.e. 05.05.2006, he again moved a complaint to the Police Post Saha, but they refused to accept his complaint and take any action stating as the matter has already been compromised. He also approached the SHO, Mullana, but he also refused to take any action in the matter. On next day i.e. 06.06.2006, Phool Wati wife of the complainant went to the Bara to throw cow dung, Dalip Singh @ Deepa, Madan Singh,

Dhira, Om Vir along with 2-3 other accused persons forcibly entered in his bara and treated his wife “Sali Chamari Tuje Waha Tere Parivar Ko, Kitni Bahar Samhayenge Ki Is Bare Par Tumhara, Koi Haq Nai Hai, Kiyun Tum Hamse Marne Ke Kam Kar Rahe Ho”. Thereafter, complainant moved an application to the SP, Ambala and DC, Ambala, but they did not take any action in the matter. He approached numerous authorities including the Secretary, SC & ST Cell/Commission, Chandigarh, but all in vain. Ultimately, complainant approached the Director General of Police, Haryana, on whose direction, a case bearing FIR No.177 dated 21.06.2006, under Section 148, 149, 452, 506 and 427 of IPC along with Sections 3 & 4 of the Act was registered in Police Station Mullana against the accused persons. Said case is still pending in the Court. Accused persons have filed a civil suit titled “Bhagwan Shiv and Hanuman Mandir Vs. Mangat Ram and others” for permanent injunction, wherein the parties were directed to maintain status quo regarding suit property. Since the accused persons are influential persons, so police has simply registered a case punishable under Section 427, 506, 148 and 149 IPC instead of Sections 148, 323, 452, 427, 380 and 506 read with Section 149 of IPC and under Sections 3 & 4 of the Act. Hence, this complaint.”

The complainant examined PW-1 Rajesh Kumar, who is son of

Mangat Ram-complainant, PW-2 Ram Nath, who is the mason of the complainant and PW-3 Nanak Chand, who mainly deposed that on 6.5.2005, the wife of Mangat Ram was going towards Bara, there Madan, Ombir, Heera and Deepa abused her. Madan slapped her. She ran away from there. PW-4 Phoolwati is the wife of the complainant. PW-5 Narinder Kumar, had brought the caste certificate of the complainant party. PW-6 Ashwani Kumar, ADRK, Record Room, Ambala, had brought the record of civil suits between Bhagwan Shiv and Hanuman Mandir and the complainant. PW-7 Mangat Ram is the complainant of the present case. He deposed as per the contents of his complaint.

The trial Court after discussing the evidence on record acquitted the accused.

I have gone through the record specially the judgment dated 14.1.2015 passed by the Judicial Magistrate Ist Class, Ambala, and find that the reasoning given by the trial Court, in no way, can be held as perverse. The incident took place on 3.5.2006, but the complaint was filed on 28.11.2006. Although, it is stated that one compromise was effected on 4.5.2006, but this document has not been proved on the Court file. Neither any signatory to the compromise, who have been stated to be respectable persons of village, has been examined in the Court. The Court below also held that PW-2 Ram Nath was also not present when the alleged incident took place regarding theft and demolishing the house and causing injuries. No doctor has been examined. One witness, namely, Nanak Chand examined as PW-3 has stated about the incident with Phoolwati, but she has

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not been named in the entire complaint. It is also the allegations that four of the persons threatened the wife of the complainant and caused hurt to her by slapping, but there are no such allegations of slapping in the complaint. Otherwise also, if 24 persons would trespass into the property and were armed with deadly weapons, then they will cause injuries of serious nature etc. The most important document in the present case is that compromise has been effected between the parties after that occurrence, but that document has not been proved as per law and cannot be looked into.

The learned Judicial Magistrate Ist Class has correctly held that there is no cogent evidence on record regarding theft of cement bags etc. The Court below has also stated in the findings that there is nothing on the record to show the ownership of the Bara. The findings given by the learned Judicial Magistrate Ist Class, Ambala, are correct as per evidence and law which do not require any interference from this Court. In no way, the findings 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 which material evidence has not been considered.

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

February 23, 2016.

(Inderjit Singh)
Judge

hsp