

In the High Court of Punjab and Haryana at Chandigarh

Crl. Misc.A. No.596-MA of 2015

Date of decision: January 08, 2016

Gian Singh

..... Applicant-Appellant

Versus

Kirpal Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. G.S. Jagpal, Advocate for the applicant-appellant.

Naresh Kumar Sanghi, J. (Oral)

The present application under Section 378(4) Cr.P.C. has been filed for grant of leave to appeal against judgment of acquittal dated 23.01.2015 passed by learned Sub Divisional Judicial Magistrate, Samana whereby the complaint titled **Gian Singh Vs. Kirpal Singh and others** for the offences punishable under Sections 148,308,323,324,325,447 and 506 read with Section 149 IPC was dismissed.

Learned counsel for the applicant submits that initially the matter was reported to the police but when no action was initiated against the culprits then the appellant-complainant was constrained to file the complaint against the private respondents for the offences punishable under Sections 148, 308, 323, 324, 325, 447 and 506 read with Section 149 IPC.

After completion of the preliminary evidence, the learned Area Judicial Magistrate had ordered for summoning of the private respondents for the offences punishable under Sections 148, 323, 324, 325, 447 and 506 read with Section 149 IPC.

During pre-charge evidence, Krishan Singh an injured as well as the doctor, who medico-legally examined him, could not be produced by the appellant-complainant and, as such, the charges for the offences punishable under Sections 148 and 323 read with 149 IPC only were framed against the private respondents.

During post-charge evidence also, the appellant-complainant could not produce Krishan and doctor, who medico-legally examined him and, as such, learned trial Court dismissed the complaint and acquitted the respondents.

Learned counsel for the applicant-appellant contends that in view of the material available on record, learned trial Court should have returned the verdict of guilt against the private respondents for having committed the offences punishable under Sections 148 and 323 read with 149 IPC.

I have heard learned counsel for the applicant and with his able assistance, gone through the material available on record.

The operative part of the judgment passed by the learned trial Court is as under:

“8. The charge in this case have been framed against the accused for committing the offences punishable under Sections 148, 323 read with Section 149 IPC. Section 148 IPC provides punishable for rioting being armed with deadly weapon. Section 149 IPC defines rioting and one of essential ingredients of this section that forms or violation used by an unlawful assembly should be in prosecution all the common object of the such assembly. In the present case even as per the complaint all the accused did not came together and in fact one set of accused came later on. Although it is well settled law that any object can be formed even at the spot, however, in the present case even as per the averments made in the complaint the complainant and his brothers asked Kirpal Singh as to why they used to call names to them like animals/insane persons. Thereafter, the second set of accused came and they did not have the occasion to listen to the conversation already took place between the complainant and first set of the accused. Moreover, this Court finds material contradictions and improvement in the statement of the complainant. Whereas, in statement Ex.CW6/2 the injuries has been attributed to accused Gurnam Singh over right leg of Gian Singh, however, Gian Singh while appearing as CW2 as in his statement dated 20.8.2014 as attributed such injuries to Gurnam Singh over his left leg. Thus, even the basic version of the complainant and Hakam Singh is contradictory. Similarly, whereas the DDR Ex.CW6/1 has been lodged by Hakam Singh, however, the present complaint has been moved by Gian Singh and neither witness Krishan nor witness ASI Darbara Singh, have been examined in the preliminary evidence have been examined after summoning of the accused. Interestingly,

Gian Singh has stated in his cross examination that they (Gian Singh and Hakam Singh) initially went to P.P. Tharua and have stayed for about after half hours and thereafter they went to Civil Hospital, Patran and they were in a position to speak, however, still they were not got admitted by the police in the hospital. Infact, as per Gian Singh, he and Hakam Singh did not get admission in the hospital. Moreover, the complainant has further stated that on the same night they went to Patiala, however, they did not get admitted in the hospital and after going to Patiala for two days for dressing they went to Chandigarh. This version of the complainant certainly makes his case doubtful. It has also admitted by the complainant earlier the accused persons lodged report against them. When these relevant facts are taken into consideration in entirety, the factum of filing of the present complaint almost after a lapse of one year and one month from the alleged date of occurrence, even leaving aside the aspect of limitation, the material contradictions discussed above, non examination of material witness in the after summoning evidence and different persons getting lodged the DDR/moving the present complaint and further the manner in which story of going to police station, civil hospital Patran then to Patiala and then to Chandigarh certainly raises more doubt regarding the case of the complainant than proving it beyond reasonable doubt. Hence, affording benefit of doubt all the accused namely Kirpal Singh, Afsar Singh, Gurnam Singh, Janesar Singh and Rakma Ram stand acquitted of the respective charges framed against them. Their bail bonds and surety bonds are discharged. File be consigned to record room."

A perusal of the material available on record would reveal that there are material contradictions in the depositions of Gian Singh and Hakam Singh; Krishan an injured and the doctor, who medico-legally examined him, were not produced by the complainant during trial; in his deposition Gian Singh improved the statement on material particulars, the parties to the complaint were already litigating with each other and, as such, there was scope for false implication; and that the complaint was filed after one year and one month from the alleged date of occurrence; would not persuade this Court to set aside the well reasoned judgment of acquittal.

Thus, leave to appeal is hereby declined.

(NARESH KUMAR SANGHI)
JUDGE

January 08, 2016
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