

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-698-MA of 2014

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Date of decision:25.2.2016

Kesri Devi

...Applicant

v.

Vinod Kumar and others

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sandeep Kotla, 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 24.2.2014 passed by learned Sub Divisional Judicial Magistrate, Ratia, whereby the complaint filed by the complainant/applicant for the offences under Sections 148, 452, 323 and 149 IPC 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 balance of convenience is in favour of the applicant and the applicant has a good case on merits. 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 complainant-Kesri Devi filed complaint against Vinod Kumar, Inder Singh, Munni Devi, Sanjay, Ved Parkash, Ramphal and Khajani-accused/respondents for the offences under Sections 148, 452, 323 and 149 IPC. As per the complainant's version on 9.12.2009 at about 8.00/9.00 p.m. when the son of the complainant, namely, Pawan alias Surjit came back home, an altercation took place between him and his wife. His mother-in-law, namely, Munni Bai came to know about this. On 10.12.2009 at about 8.00 p.m., mother of Saroj, namely, Munni Devi, her brother Vinod and Inder Singh came to the house of the complainant. Sanjay, Ved Parkash, Ramphal and Khajani also came there afterwards. Inder Singh, who was armed with Lathi, hit the same on the head of the complainant. Sanjay and Ved stated that they would teach a lesson for beating their niece Saroj. On saying so, Vinod and Munni Devi caught hold of complainant and gave blows on her chest. When the son of the complainant tried to rescue the complainant, Inder Singh, Sanjay, Ved Parkash and Khajani gave beatings to her son Pawan alias Surjit. On hearing noise, Suman wife of Mange came at the spot, who rescued the complainant. After that the accused persons fled away. The complainant and her son Pawan alias Surjit went to Civil Hospital, Fatehabad, where they were medico-legally examined. It is also stated that on the next day, the Police recorded the statement of the complainant, but no action was taken against the accused.

The complainant examined in pre-charge evidence herself as PW-2, Pawan alias Surjit as PW-3 and Dr. Samir Kumar as PW-1. After charge, the doctor witness was not examined.

The learned Sub Divisional Judicial Magistrate, Ratia, vide impugned judgment dated 24.2.2014 acquitted the accused. A perusal of the findings shows that these findings are as per evidence and law and, in no way, can be held as perverse. 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. As per the allegations the occurrence took place on 10.12.2009 and the complaint was filed on 9.8.2010 i.e. there is a delay of eight months in filing the complaint. Though the accused had produced DDR Ex.D.2 showing the compromise between the parties regarding the occurrence on 15.12.2009 which bears the signatures of the complainant and respectable persons also, but nothing has been shown as to why the complainant has not proved the first version given to the Police by producing cogent evidence. Otherwise also, if the matter was compromised in the presence of Police about whatever occurrence took place on 10.12.2009, then the complaint cannot be filed again on the same facts after eight months. Secondly, the Court below from the defence evidence held that as per attendance register Ex.D.6 accused Vinod Kumar was present in Rana Polycot Limited situated near Lalru, District Mohali from 8.00 a.m. to 5.30 p.m. on the alleged date of incident and as per evidence it is four to five hours journey to reach Ratia even by car. Therefore, the Court below held that the presence of accused Vinod Kumar on the spot is doubtful. It is

also in the evidence that on an application moved by the complainant party against the accused it was found by the Deputy Superintendent of Police after investigation that the complainant party is moving such application to the Police to create a defence in case a case is got registered by Saroj daughter-in-law of the complainant. It is also discussed that the daughter-in-law of the complainant got registered FIR for the offence under Section 498-A IPC on 23.7.2010 and the present complaint was filed as a counter-blast on 9.8.2010 and it is admitted by the complainant that this complaint was filed only after the registration of this FIR. Further more, as already held, the doctor was not examined after the framing of charge and the injuries are also not proved. The injuries are also mainly of complaining of pain etc. It also looks unnatural that so many persons with the weapon would cause such type of injuries i.e. the complaining of pain etc. There are 8 injuries on the persons of Surjit Singh and complainant Kesri Devi and out of these seven are complaining of pain, tenderness etc. The findings given by the learned Sub Divisional Judicial Magistrate, Ratia, are correct as per evidence and law and do not require any interference from this Court. The findings cannot be held as perverse. The evidence has been appreciated in the right perspective.

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 25, 2016.

(Inderjit Singh)
Judge

hsp