

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.16637 of 2014
and
Criminal Misc. No.A-824-MA of 2014

.....

Date of decision:1.3.2016

Nachhattar Singh

...Applicant

v.

Chhotia and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. L.S. Sandhu, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.16637 of 2014:

For the reasons mentioned in the criminal miscellaneous application, the delay of 3 days in filing the application for grant of leave to file appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-824-MA of 2014:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Chhotia etc.-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 12.3.2014 passed by learned Judicial Magistrate Ist Class, Dabwali, whereby the complaint filed by the complainant/applicant for the

offences under Sections 323, 506, 504, 452, 427, 342 read with Section 34 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 applicant led sufficient evidence to prove his case but the learned trial Court by misreading and non-reading the whole evidence brought on record, acquitted the accused/respondents. The impugned judgment passed by the learned trial Court suffers from illegality and irregularity and thus, the same deserves to be set aside. 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-Nachhattar Singh filed complaint against Binder Singh and Chhotia-accused for the offences under Sections 323, 506, 504, 452, 427, 342 read with Section 34 IPC. Binder Singh died during the pendency of the case.

The brief facts of the case are that complainant along with his brothers is having one plot measuring 36 Marlas which is within 'Lal Lakir'. His five brothers had sold their shares in the said plot to accused Binder Singh and his brother and handed over the possession of the same to them. It is also stated that on 29.11.2009 around 7.00 p.m., accused-Krishan Kumar, ASI along with two other persons came to his house and took him in

the jeep to Police Post Goriwala and put him in the police lock-up illegally. The complainant had made a complaint on 14.9.2009 against accused Nos.1 to 3, but accused No.4 did not took any action against the accused persons. On 30.11.2009, around 8.00/8.30 p.m., he was taking care of his animals and at that relevant time accused Nos.1 to 3 having with them lathis in their hands came there and accused Chhotia gave a fist blows, slaps and danda blow on his person and also abused him. The accused persons threatened him that they would kill his family members if any complaint was made against them. The matter was reported to the Police, but to no effect.

The learned Judicial Magistrate Ist Class, Dabwali, vide judgment dated 12.3.2014 acquitted the accused after appreciating the evidence.

From the record, I find that first of all there is nothing on the record to show on which specific portion out of 36 Marlas the present complainant is in exclusive possession. As per the facts of the complaint itself, five brothers of the complainant had sold their shares in this property and possession was delivered to Binder Singh and his brother. It is in the evidence that Chhotia had purchased the property from Binder Singh and his brother Raghuvir. The Court further held that even after considering the deposition of the complainant, he had alleged that he was pushed by the accused and no allegation of criminal intimidation has been made even by him during his deposition. The learned Judicial Magistrate Ist Class, Dabwali, further held that medical record had been produced and the record too show no injury to the complainant. The Court below further held that

when Chhotia on the basis of purchase etc. is in possession, then, in no way, it can be held that he criminally trespassed into the possession of the complainant. As already discussed, the complainant had not specifically stated that on which specific portion he was in exclusive possession where Chhotia had trespassed. The Court below held that no civil suit has been filed by the complainant for taking possession of the plot. No demarcation report etc. of the plot had been filed by him. PW-3 Ram Kumar's statement is hearsay evidence. PW-2 had admitted that no neighbour came out at the time of alleged incident. PW-2 further failed to specify the specific date, time and year when the alleged incident had taken place or the accused have illegally occupied their plot. The reasoning given by the learned Judicial Magistrate Ist Class, Dabwali, are correct as per evidence and law. In no way, this reasoning can be held as perverse. Nothing has been pointed out at the time of arguments as to which material evidence has been misread by the Court below and which material evidence has not been considered by the Court below. The impugned judgment passed by the learned Judicial Magistrate Ist Class, Dabwali, is correct as per evidence and law which does not require any interference from this Court.

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.

March 1, 2016.

(Inderjit Singh)
Judge

hsp