

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-A No.916-MA of 2011(O&M)
Date of Decision-24.01.2017**

Ram Krishan

... Applicant

Versus

Munni Sharma and another

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. M.K. Garg, Advocate for the applicant.

Mr. Achin Gupta, Advocate for the respondents.

RAJ MOHAN SINGH, J.

[1]. Applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C seeking leave to appeal against the judgment of acquittal dated 13.05.2011 passed by Special Judge (Sessions Judge), Faridkot in a criminal complaint under Section 3(III) (V) (X) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Sections 323/506/34 IPC.

[2]. Complainant filed a complaint with the allegations that he was having a shop in Purana Dana Mandi, Kotkapura near the main gate. Complainant claimed himself to be a Cobbler belonging to Scheduled Caste. Accused Krishan Lal (since deceased), his wife Munni Sharma and daughter Golu Sharma were running a shop of selling and mending Tarpaulins and

Pallies (Jute sheets). Complainant also started trading of selling Tarpaulins and Pallies along with his work of mending shoes and that irked the accused party and developed into a rivalry between them. Complainant alleged that on 26.09.2005, when the complainant was present at his shop, then at about 12.00 noon, accused Munni Sharma and Golu Sharma came to the shop of the complainant in furtherance of preparations and pre-meditation and started assaulting the complainant by giving slaps on his face. Golu Sharma gave kick blows in the stomach of the complainant. Since accused were women, complainant restrained himself and asked them why they were beating him. Both the accused gave abuses in the name of caste and used derogatory words. Accused Munni Sharma uttered derogatory words in the name of caste in order to humiliate the complainant. Complainant raised alarm which attracted the passers-by i.e. Rakesh Kumar, Suridner Kumar, Ajay Kumar, Daya Ram, Babu Ram and others. With the intervention of the aforesaid persons, complainant was saved from the accused.

[3]. Complainant further alleged that in the meanwhile, accused Krishan Lal (since deceased) also came there with a daang from his shop with an intention to kill the complainant and tried to give a daang blow at his head. Complainant dodged the same and thereafter, Krishan Lal (since deceased) threatened the complainant and also remarked in the name of caste in an abusive manner. Complainant also alleged that the motive

behind the incident was a business rivalry as the accused felt jealous of the complainant because of his involvement in the same business in which accused party was involved. Accused assaulted the complainant with common intention. The complaint made by the complainant before the Police in writing did not yield any positive result and that prompted him to file the complaint in question.

[4]. After recording preliminary evidence, Additional Chief Judicial Magistrate, Faridkot summoned the accused for the offences under Sections 323/506/34 IPC vide order dated 30.08.2008. A revision petition was filed by the complainant before the Sessions Judge, Faridkot which was allowed on 07.11.2008 and it was held that sufficient grounds existed to summon the accused persons for the offences under Section 3 (III) (V) (X) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

[5]. With the death of Krishan Lal, proceedings against him stood abated. In due course, the case was committed to the Special Judge. On finding prima facie, accused were chargesheeted for the offences under Section 3(X) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as well as under Sections 323/506/34 IPC. The accused pleaded not guilty and claimed trial.

[6]. Complainant in his evidence examined Daya Ram one of the witness to the occurrence as PW 1. Complainant himself appeared as PW 2 and reiterated the stand taken in the complaint Ex.PA, complaint sent to the Police Ex.PB and caste certificate Ex.PC. Rakesh Kumar another eye-witness was examined as PW 3 in order to corroborate the occurrence. Thereafter, complainant closed his evidence.

[7]. Accused were examined under Section 313 Cr.P.C and all the incriminating allegations were put to them. Accused denied the allegations of the prosecution and took up the plea that on 26.09.2005, complainant along with his brother Rani forcibly entered the house of the accused and outraged the modesty of Golu Sharma in the presence of Anu Sharma, her brother. A complaint was filed against the complainant and his brother Rani who were facing trial in the Court. The complainant in fact fabricated the allegations in the complaint in question and the filing of complaint was a counter blast to the case filed by the accused against the complainant. Accused proved documents Ex.DA to Ex.DC in this regard.

[8]. On the basis of evidence led by the parties, trial Court found that it was obligated on the prosecution/complainant to establish his case beyond all shadow of doubts and the complainant was not entitled to take any benefit out of the weakness of the case of the defence.

[9]. Admittedly, complainant was belonging to a Scheduled Caste and the statement of PW 1 Daya Ram, eye-witness in the context of use of words by the accused was found to be distinct from the wording written by the complainant in his complaint Ex.PA. The utterances attributed to accused Munni Sharma were also in sharp contrast with the set of utterances detailed in the complaint in the second set of utterances. In cross examination, the allegations of the complainant that his clothes were torned by the accused and he was beaten for 15-20 minutes were found to be lacking in view of evidence on record. No medical evidence was brought on record. The witnesses admitted that they were having proximity with the complainant and the trial Court found them to be interested witnesses. The accused took up a specific defence that on 26.09.2005, at noon time, complainant and his brother had trespassed into the house of the accused and tried to outrage the modesty of Golu Sharma. Complaint Ex.DA was proved by the accused which showed that the same was filed on 08.10.2005 and the complaint in question was filed on 24.02.2007 i.e. at a belated stage. Complainant as per order dated 30.10.2006 (Ex.DB) was summoned in the said complaint filed by the accused party.

[10]. The Court also noticed that filing of the complaint was a counter blast to the complaint filed by the accused and it was conceded position that the complaint filed by the accused party was prior in point of time. The cross examination of the

complainant revealed that the castes namely Chamiyar and Chuhra are two distinct and separate castes under the Act. The first alleged utterances in the complaint were attributed to Krishan Lal (since deceased) and further utterances at point A to A1 in the complaint Ex.PA were not attributed to any particular person. Rakesh Kumar (PW3) totally changed the complexion of the case inasmuch as that he stated that Golu Sharma gave kick blows and Munni Shrma gave abuses. The aforesaid facts were found to be in sharp contradiction to the stand taken by the complainant in the complaint as well as in the statement. The witness was confronted with the previous statement whereupon he tried to impress upon his version and attributed to each of the accused and rather attributed certain utterances to accused Krishan Lal which were totally missing in the stand taken by the complainant in the complaint as well as in the previous statement of the witness. Trial Court found that the ingredients of the offences in question were missing altogether.

[11]. I have considered the submissions made by the parties.

[12]. The filing of the present complaint was subsequent to the earlier complaint filed by the accused in which allegation of outraging modesty of Golu Sharma was alleged against complainant and his brother. The complainant was summoned by the Court of law. The use of words at two different places was

also found to be distinct and contradicted with the stand taken by the complainant at different times. The words attributed to each of the accused kept on changing throughout the period. The use of words shown in complaint Ex.PA was changed in Ex.PB and subsequent evidence led by the complainant and his witnesses. Even, attribution to each of the accused has undergone a sea change in terms of sharp contradiction at different times. The evidence led by the defence went unrebutted as it was a conceded position that the complaint filed by the accused was prior in point of time. The complainant party were facing prosecution in the Court of law. In the complaint filed by the accused under Section 354 IPC, complainant party were convicted and they were released on probation by the lower Appellate Court while maintaining the conviction. The complaint filed by the complainant was found to be inordinately delayed.

[13]. In considered opinion of this Court, judgment of acquittal recorded by the trial Court cannot be faulted with on the strength of evidence on record. The evidence on record was not sufficient to convert the findings of acquittal into findings of conviction.

[14]. In view of overall material on record, this Court is not in a position to interfere in the findings of acquittal recorded by the trial Court which were based on lawful appreciation of evidence. In view of aforesaid, this application found to be totally

devoid of merits, therefore, the application for grant of leave to appeal as well as appeal stand dismissed.

(RAJ MOHAN SINGH)
JUDGE

24.01.2017
Prince

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No