

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

**CRM No.14692 of 2016 in/and
CRA No.S-3247-SB of 2014 (O&M)
Date of decision: May 11, 2017**

Ashok Kumar

...Applicant

Versus

Yashpal Kaushal and another

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.S.Chahal, Advocate
for the applicant.

Mr.Vijay Lath, Advocate
for respondent No.1.

Mr.J.S.Bhullar, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

CRM No.14692 of 2016

Applicant-Ashok Kumar has filed this application under Section 378 Cr.P.C. seeking permission for leave to appeal against respondents Yashpal Kaushal and State of Punjab, challenging the impugned judgment dated 26.05.2014 passed by learned Addl. Sessions Judge-cum-Judge, Special Court, Rupnagar, vide which the accused-respondent No.1 was acquitted of the charges framed against him.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is

further stated that learned trial Court has not property appreciated the evidence produced by the prosecution and has therefore, caused miscarriage of justice. It is, therefore, prayed that leave to appeal be granted.

From the record, I find that challan was presented against accused-respondent Yashpal Kaushal in case FIR No.53 dated 01.06.2012 under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 506 IPC. The brief facts of the case as noted down in the judgment passed by learned Addl. Sessions Judge-cum-Judge, Special Court, Rupnagar, are as under:-

“2. The case of the prosecution, in brief, is that complainant Ashok Kumar moved an application before the DSP, Anandpur Sahib alleging that he was resident of village Mojowal, Naya Nangal, Tehsil Nangal, District Ropar and he had been working as Music Teacher in Saint Soldier Divine Public School, Naya Nangal for the last 4 years. Today on 12.4.2012, he was present in his school, where Principal YP Kaushal asked him that Varinder Sambook had got registered a case bearing FIR No.131 dated 11.11.2011 under section 295-A of the Indian Penal Code at police station Nangal against him and Vice Principal V.K.Saini and he was main witness in the case and threatened to kill him in case he appear as a witness in the case. When he refused to obey them, Y.P.Kaushal come out of his office and remarked him in the presence of people standing over there that he was Kutta Chuhra Chammar, therefore, he was helping the Chammar. Varinder Sambook and his Balmiki Society could not do any harm to him and he Chuhra Chamar cannot do harm to him and he should not come to the school from tomorrow onwards. The action may be taken against the accused. On the application of the complainant Ex.PW1/A a case under section 3 and 4 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 was registered against the accused after inquiry and case was sent to the SSP, Rupnagar for further inquiry from Special Investigating Team. Then the SSP, Rupnagar constituted a Special Investigating Team. Thereafter, preliminary investigation was conducted by Inspector Kesar Singh. Inquiry report was prepared by Special Investigating Team. Accused YP Kaushal was arrested in this case. Statements of the witnesses were recorded. Site plan Ex.PW6/A was prepared. After completion of investigation and other formalities, challan against the accused was presented in

the Court.”

On presentation of challan against the accused, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused was charge-sheeted under Section 3(1)(x) of the SC/ST Act, 1989 and Section 506 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Ashok Kumar, complainant, PW-2 Joga Khan, PW-3 Ganeshwar Sharma, PW-4 Anita Bassi Singh and PW-5 SI Sampuran Singh, Investigating Officer.

Accused was examined under Section 313 Cr.P.C. He denied the correctness of the evidence and pleaded himself as innocent. In defence, accused examined DW-1 Avtar Singh who stated that his duty is at the entry gate of the school and he is maintaining the entry register and proved the copy of the entry register of dated 12.4.2012 as Ex.DX. DW-2 Sandeep Kumar, DW-3 Archana Sharma were also examined. Archana Sharma proved the CD Ex.D1.

Learned Addl. Sessions Judge-cum-Judge, Special Court, Rupnagar, after appreciating the evidence, acquitted the accused-respondent vide judgment dated 26.05.2014

Aggrieved from the above-said judgment, appeal along with present application for grant of leave to appeal has been filed.

Notice of motion was issued. Learned counsel for respondent No.1 appeared and contested the application. Learned State counsel also appeared

I have heard learned counsel parties as well as learned State

counsel and have gone through the record.

The perusal of the FIR shows that learned trial court has appreciated the evidence in right perspective. The statements of the PWs have been discussed in minute detail. The findings given by learned trial Court shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below.

Learned Addl. Sessions Judge, Rupnagar, held that the case of the complainant is that on 12.4.2012 after the assembly at about 9.30 AM, he was stopped by the Principal, who told him that since he has refused to give an affidavit on the asking of the society of 'Chuhar Chamars' but they cannot harm him in any manner. It is also the case of the complainant that two persons namely Ganeshwar Sharma and Joga Khan were also present there for the purpose of admission of their children and Joga Khan was there to take his money from him as he was to receive his salary. The complainant also stated he submitted the application Ex.PW1/A on 12.4.2012 and another application before the police post Naya Nangal on 25.4.2012 Ex.PW1/B.

Learned trial Court, after perusing the complaint Ex.PW1/A dated 12.4.2012 found that in this complaint, there is no mention of the name of Joga Khan and Ganeshwar Sharma witnesses and the version as mentioned in the application is that on 12.4.2012, he (Ashok Kumar) was present in the school and the Principal of the school Y.P.Kaushal had asked

him that he is main witness in the case FIR No.131 dated 11.11.2011 under Section 295-A IPC and pressurized him that in case, he appears as a witness in the above said case against him, then they will kill him and when he refused to obey them, then Y.P. Kaushal outside his office addressed him 'Tu Teh Kuta Chuhra Chamar Hi Hain' and that the Balmiki Sanstha could not do any harm to him. The Court further held that in the complaint Ex.PW1/B dated 25.4.2012, it is mentioned that on 12.4.2012, after 9.30 AM at about 10.30 AM, Principal had called the complainant in the Office where, Madam Sukhwinder and Balwinder close associate of the Principal were present and asked him that he is not qualified as a Music Teacher. It is further mentioned that at about 12.00, the Principal called him second time in his Office, where, Saini Sir along with some female teachers and gate keeper were present and Principal called the accountant and ordered him to make the payment of the wages due to complainant immediately and that he is not to be seen in this school from that day onwards. The Court from these applications Ex.PW1/A, Ex.PW1/B and version in the complaint, found that the complainant has given three different versions. No time of alleged occurrence is mentioned in the application Ex.PW1/A and the name of the witnesses Joga Khan and Ganeshwar Sharma also do not find mention in the same. The Court further held that complainant Ashok Kumar while appearing as PW-1 has made improvements while making statement in the court and has contradicted his own complaint, as in the statement recorded in the Court, he has stated that after the assembly he was stopped by the Principal, whereas, in the complaint Ex.PW1/A, he has stated that the Principal had come out of his office and passed the remarks against his

caste. In the complaint Ex.PW1/B, he has made mention about the presence of Madam Sukhwinder and one Balwinder also. The complainant also admitted that Ex.PW1/B does not bear the fact that on 12.11.2011 the school principal in the assembly had asked G.K question from the children that whether they know the name of Bhagwan Balmiki in his childhood and his profession. He has also stated that he did not get recorded in Ex.PW1/B that when no body answered the question, then Principal showed some printed material down loaded from the Internet and said that the childhood name of Bhagwan Balmiki was Rattankar and his profession was dacoity.

Learned Addl. Sessions Judge, Rupnagar, discussed the entry register of the school, which is duly proved and the witness's entry was not found in that register, which means presence of eye witnesses is also doubtful.

Keeping in view the evidence on record, which has been appreciated by the trial Court in minute detail and in right perspectives showing contradictions and material improvements in the version of the complainant and also in view of the fact that presence of witnesses at the time of occurrence looks doubtful, learned trial Court has rightly acquitted the accused.

From the perusal of the judgment passed by the Court below, I find that the findings have been given by correctly appreciating the evidence in right perspective. In no way, the judgment can be held as perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 26.05.2014 passed by learned Addl. Sessions Judge-cum-

Judge, Special Court, Rupnagar, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

CRA No.S-3247-SB of 2014

As the application for grant of leave to appeal has been dismissed, as stated above and no ground is made out for grant of leave to appeal, consequently, present appeal stands dismissed.

May 11, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No