

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

**CRM No.A-1031-MA of 2013 (O&M)**  
**Date of decision: March 22, 2017**

Om Parkash

...Applicant

Versus

Shanti Devi and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.Kunal Dawar, Advocate  
for the applicant.

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**INDERJIT SINGH, J.**

**CRM No.48882 of 2013**

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 8 days in filing the application seeking leave to appeal, is condoned.

**CRM No.A-1031-MA of 2013**

Applicant-Om Parkash has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Shanti Devi and other respondents, challenging the judgment dated 09.09.2013 passed by learned Judicial Magistrate Ist Class, Fatehgarh Sahib, Camp Court at Amloh, whereby the accused-respondents were acquitted.

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 judgment of acquittal passed by learned trial Court is based on total misreading and mis-appreciation of evidence on record. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Om Parkash filed a complaint against accused Shanti Devi, Purshotam Lal, Mukesh Kumar, Rajinder Singh @ Titu, Anil Kumar, Pappu, Charan Dass, Bhupinder Kumar, Naresh Kumar @ Tota and Sanjay Kumar under Sections 457, 427, 328, 380, 148 and 149 IPC.

The averments of the complaint as noted down in the judgment passed by learned JMIC, Fatehgarh Sahib, Camp Court Amloh, are as under:-

*“1. Present complaint has been filed with the averments that the complainant is running business of STD/PCO and supplying electricity goods from the shop in dispute. The shop in dispute was owned by his father. His father gave the shop to him through Gift Deed dated 7.2.2000. Now, complainant is owner and in possession of shop. Earlier the shop in dispute was under mortgage with Shubh Karan Gupta vide Mortgage Deed dated 12.12.1989. On 9.9.1999, father of the complainant paid the mortgage amount and got the possession of vacant shop. Thereafter, on 13.9.1999, father of complainant gave the shop to complainant on rent and in the said shop complainant has been running the business of electric goods. It is further averred that on 27.9.1999, the accused persons with the connivance of police beat the complainant. The complainant got recorded FIR No.156 dated 7.12.1999. On 13.11.1999, the keys of the shop were returned to the complainant. The other party went to Hon'ble High Court but the Hon'ble High Court dismissed their petition. The proceedings U/S 145 Cr.P.C were also started with respect to disputed shop. On 14.12.2000, SDM Amloh went to inspect the spot. In the presence of SDM, Amloh, the accused persons tried to take possession of shop forcibly. An FIR No.138 dated 14.12.2000 was recorded against the accused persons at Police Station Amloh. Thereafter, complainant obtained stay order from the Civil Court in civil suit filed by him which was fixed for 20.7.2000. But, on the night of 19.7.2001, the accused persons who were armed with sticks, swords and guns tried to take possession of the shop forcibly by breaking the wall. The accused persons damaged the goods which were lying in the*

*shop and they also took away some of the goods from the shop. In this way, they caused loss to the complainant to the tune of Rs.70/80,000/-. The accused persons also threatened to kill the complainant. The complainant also contacted the Police of Police Station Mandi Gobindgarh but the police did not take any action. Hence this complaint.”*

The accused were charged under Sections 380 and 427 IPC, to which they pleaded not guilty and claimed trial.

The complainant examined CW-1 Sarwan Kumar, Deed Writer, who deposed that gift deed dated 07.02.2002 Ex.C1 was scribed by him at the instance of Piara Lal in favour of Om Parkash. Complainant himself appeared as witness. Then, he examined PW-2 Head Constable Mohan Singh, who produced FIR No.94 dated 16.08.2001. PW-3 Nirmala Devi, wife of complainant, also supported the version of the complainant.

The accused tendered into evidence, certified copy of judgment dated 13.9.2012 Ex.D3, certified copy of decree sheet Ex.D4, certified copy of order dated 12.5.2001 Ex.D5, certified copy of judgment Ex.D6, certified copy of judgment dated 2.7.2012 passed by Ld.Addl.Sessions judge, Fatehgarh Sahib Ex.D7; Ex.D1 statement of Om Parkash, copy of compromise dated 23.5.1981 Ex.D2 etc.

Learned JMIC, Fatehgarh Sahib, Camp Court at Amloh, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondents vide impugned judgment dated 09.09.2013.

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

I have heard learned counsel for the applicant and have gone through the record.

The perusal of the findings given by learned Magistrate 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.

From the record, first of all, I find that the complainant has not led cogent evidence to prove his possession and ownership over the property in dispute. The Court below relied upon compromise Ex.D1, in which it is stated that there was need of maintenance and residence for Shanti Devi. It is also held that in the compromise Ex.D1, it is admitted fact that Shanti Devi accused No.1 daughter of Piara Lal was a destitute widow. The tenant himself had surrendered the possession of 30'x14' in the wake of destitute widow status of Shanti Devi. The Court also held that Ex.D5 and Ex.D6 also create doubt in the version of the complainant as it has been found that possession of the suit property was found with accused No.1 on the basis of report of Local Commissioner. The complainant has himself admitted in cross-examination that Local Commissioner had visited the spot prior to the occurrence, though he volunteered that said visit was not in his presence. Learned Magistrate also held that it means that on the date of occurrence, the possession was with Shanti Devi. Star witness Nirmala Devi also admitted in cross-examination that since Shubhkaran vacated the shop, Shanti Devi is in possession of the same, though, she volunteered that same was taken forcibly. The alleged date of delivery of possession by Subhkaran is 09.09.1999 and if the possession of said shop in question is admitted by the eye witness/wife of the complainant herself to be with accused No.1 since 09.09.1999, then where is the question of trespassing into the shop by the accused, when she is owner in possession of the same.

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 09.09.2013 passed by learned Judicial Magistrate Ist Class, Fatehgarh Sahib, Camp Court at Amloh, 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.

**March 22, 2017**  
Vgulati

**(INDERJIT SINGH)**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable

**Yes**  
**No**