

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

**CRM-A-556-MA-2013  
Date of decision:-4.12.2017**

Jagdish

...Applicant

Versus

Ishwar

...Respondent

**CORAM : HON'BLE MR. JUSTICE H.S. MADAAN**

**Present :** Mr.Vivek Khatri, Advocate  
for the applicant.

Mr.T.C. Dhanwal, Advocate  
for the respondent.

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**H.S. MADAAN, J.**

Applicant – Jagdish has filed this application under Section 378(4) Cr.P.C. seeking special leave to appeal.

Briefly stated, facts of the case are that complainant – Jagdish son of Sh.Anant Ram, resident of Uklana Mandi, Tehsil & District Hisar had filed a complaint against accused Ishwar son of Sita Ram, aged 45 years, resident of Uklana Mandi, Tehsil & District Hisar and his wife Shakuntla on the allegations that accused Ishwar had hatched a conspiracy with the editor of Newspaper *Hari Bhumi* and got published a news in the said newspaper edition dated 10.6.2004, 13.6.2004 and 5.7.2004 to the effect that complainant had sold the house belonging to his brother and nephew fraudulently for a sum of Rs.1,40,000/- to Smt.Sudesh wife of Suresh, resident of District Jind and that on 5.7.2004, when complainant went to the house of accused for

expressing his resentment, then Ishwar and Shakuntla beat him up and threatened to kill him.

After recording of preliminary evidence, both the accused had been summoned to face trial. The case was fixed for pre-charge evidence of complainant, during which he adduced such evidence wherein PW1 Dharampal stated that he had read the news in question in the newspaper dated 9.6.2004 and 12.6.2004. The complainant also examined Om Parkash as PW2, who claimed to have read newspaper dated 9.6.2004 and further PW5 Shamsheer Singh, who proved newspaper dated 9.6.2004 as PW3/A and newspaper dated 12.6.2004 as Ex.PW3/B, newspapers dated 5.7.2004, 10.6.2004 and 13.6.2004 as Ex.PW5/A to Ex.PW5/C. The complainant himself appearing as PW4 repeated on oath his case as given in the complaint.

Thereafter on consideration of the matter, accused Shakuntla was discharged, whereas accused Ishwar was ordered to be charge-sheeted for the offence of defamation. He was charge-sheeted accordingly for the offence under Section 500 IPC, to which, he pleaded not guilty and claimed trial.

After framing of charge, learned counsel for the complainant made a statement that he does not want to lead any further evidence and closed the same.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to him but he denied the allegations contending that he is innocent and he has been falsely implicated in the case.

In defence evidence, accused examined DW1 Dharam

Singh, Reader to Naib Tehsildar, who brought the record of the complaint filed by Ishwar against Sudesh and Jagdish, proving copy of complaint as Ex.D1, copy of sale deed executed by Jagdish in favour of Sudesh as Ex.D3, partition deed regarding the house in question as Ex.D4.

With that the defence evidence stood closed.

After hearing arguments, learned trial Magistrate dismissed the complaint and acquitted the accused of the charge framed against him, which left the complainant aggrieved and he had knocked at the door of this Court by moving an application under Section 378 (4) Cr.P.C. for grant of special leave to appeal against the judgment of acquittal, notice of which was given to respondent – accused, who put in appearance.

I have heard learned counsel for the parties besides going through the record.

Learned trial Magistrate while dismissing the complaint and acquitting the accused has given reasoning for arriving at the conclusion, which is contained in para No.8 of the judgment. The said para is being reproduced as under:

*After going through the case file very carefully as well as rival contentions, this Court is of the confirmed view that in the present case, complainant side is completely failed to prove that it is upon the instance of the accused Ishwar news in question was published in the Newspaper dated 12.6.2004, 13.6.2004 and 5.7.2004 which are Ex.PW5/B, Ex.PW5/C and Ex.PW5/A respectively. PW5 Shamsher*

*Singh Saini in the recalled examination on 23.10.2010 proved these documents and he in his cross-examination clearly stated that he has no evidence with him to show that it is upon the instance of Ishwar, the news were published in the Newspapers. The arguments of the learned counsel for complainant is not acceptable, because only on the basis of guess, surmises or conjectures, criminal liability cannot be fixed upon the accused. The case has not been proved beyond all reasonable doubts. All the news items from Ex.PW5/A to Ex.PW5/C show that complaint was moved by aggrieved party to S.P. Hisar as well as DC, Hisar. In Ex.PW5/A it is also mentioned that one State President of Haryana Khet Union also raised protest against the transaction in question. Judicial notice can also be taken on the fact that press-reporters also decipher the news at their on instance. All the news items show that the aggrieved parties are requesting for justice. None of the news items state that it is upon the instance of Ishwar the news items were published.*

The main reason, which weighed on the mind of the trial Magistrate in dismissing the complaint was that the complainant had failed to prove that the news items had been published in the Newspaper at the asking of the accused or at his instance. The accused Ishwar is admittedly neither the publisher nor the editor of the newspaper in question. As a matter of fact, he is not shown to have any connection with the newspaper. The complainant has not impleaded the publisher

and editor of the newspaper as accused. The Court cannot draw any inference on the basis of conjectures and surmises that the news had been got published by Ishwar, when there is no positive evidence in that regard available on the file. Even otherwise, ingredients of offence of defamation dealt with by Section 499 IPC punishable under Section 500 IPC are not fulfilled since it is not established on record that the complainant was lowered or brought down in estimation of the persons knowing him as a result of publication of the news in question in the newspaper. Accused in his defence evidence had examined DW1 Dharam Singh, Reader to Naib Tehsildar, who had proved copy of complaint as Ex.D1 and sale deed executed by Jagdish in favour of Sudesh Ex.D3 and partition deed regarding the house in question as Ex.D4. The judgment passed by the trial Magistrate had been challenged in appeal before learned Additional Sessions Judge, Hisar, however vide judgment dated 12.4.2013, the appeal was not found to be maintainable there.

Thus no ground is made out to grant special leave to appeal in this case. The application is, therefore dismissed accordingly.

4.12.2017

Brij

(H.S.MADAAN)  
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No