

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

**CRM-A-1273-MA-2016 (O & M)
Date of Decision:-26.7.2017**

Mohar Pal

...Applicant

Versus

Rambir and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Ravi Malik, Advocate for
Mr. Sanjeev Kr. Panwar, Advocate
for the applicant.

HARI PAL VERMA J.

CRM No.21250 of 2016

Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 39 days in filing the appeal.

Learned counsel for the applicant has argued that the applicant-complainant is a rustic villager and a poor person and could not arrange the funds for filing the appeal.

Considering the fact that delay is of 39 days and the applicant-complainant has claimed that he is rustic villager and is poor person, which fact has also been supported by the affidavit, the present application is allowed and the delay of 39 days in filing the application for leave to appeal is condoned.

CRM-A-1273-MA of 2016

The applicant has filed the present application under Section 378(4) Cr.P.C. seeking leave to appeal against judgment dated 21.3.2016 passed by learned Judicial Magistrate 1st Class, Palwal, whereby the complaint filed by the applicant was dismissed and consequently the accused persons were acquitted of the charges levelled against them.

Briefly stated the applicant-complainant had filed a complaint under Sections 147, 148, 294, 323, 379, 447, 452, 120-B, 506 and 34 IPC against the accused persons. As per complaint, the complainant is owner in possession of khasra No.3/3 shown as EAIJ in the site plan. Earlier, father of the complainant had filed a civil suit titled 'Sita Ram vs. Devi Ram etc', which was dismissed by the Additional Civil Judge, Palwal vide judgment dated 09.8.2014. In appeal, learned Additional District Judge, Palwal had declared the complainant and his brother to be in possession of the land as shown in EAIJ in the site plan. The complainant is a member of the Panchayat of Village Mandkol and the present accused No.1 Rambir and accused No.2 to 6 want to misuse the panchayat funds to which the complainant refrained them from doing so and in this background accused held a grudge against the complainant. However, on 8.1.2010 accused No.1 along with other accused came to the aforesaid khasra number and started demolishing the wall. But when complainant persuaded them, accused returned empty handed. Again on 28.1.2010 at about 3 PM all the accused came and started demolishing the wall and demolished 60 feet long and 14 inch wide wall, which was constructed 15 years ago. They have also

uprooted Kikker trees. The accused abused the family members of the complainant. In this manner, the accused have defamed the complainant. Though the matter was reported to the police but no action thereon was taken, hence, the present complaint.

In preliminary evidence, the complainant has examined himself as CW1, Dal Chand as CW2, Sarvesh as CW3 and Raj Kumar as CW4 and also tendered copy of site plan as Ex.CW1/A, copy of judgment dated 15.12.2016 as Ex.CW1/B and Photographs (collectively) as Ex.CW1/C. Though the complaint was dismissed by learned Additional Chief Judicial Magistrate, Palwal vide judgment dated 25.11.2011, however, against the said judgment dated 25.11.2011, the applicant has filed the revision petition. The judgment dated 25.11.2011 was set aside and the trial Court was directed to conduct further inquiry in the matter and to pass speaking order. Thereafter, report under Section 202 Cr.P.C. was obtained and vide order dated 6.7.2013 the accused were summoned to face trial under Sections 447, 506 and 149 IPC.

In the statement under Section 313 Cr.P.C., the respondents-accused made statement that the complainant is deposing falsely in the case.

The allegation in the complaint is that accused have demolished 60 feet long and 14 inch wide wall, constructed 15 years ago and uprooted the Kikar trees. The accused also abused the family members of the complainants. The trial Court held that since the complainant has failed to lead any evidence that the disputed wall has been demolished by

the accused persons and rather in the inquiry report under Section 202 Cr.P.C. dated 1.3.2013, conducted on the basis of order of the Court by ASI Ram Avtar, illegal encroachment of the rasta chowk by the complainant etc. was found and to remove the illegal encroachment on the order of SDM, Palwal dated 8.1.2010 and on 28.1.2010 proceedings were initiated and consequently, on 28.1.2010, illegal encroachment made by the complainant on the rasta chowk was removed by the administration. The Kikar trees and bushes were also removed from the rasta chowk after obtaining the necessary permission from the Forest Department, these trees were auctioned. The Court found that no demolition of wall was established during the illegal encroachment. Since the complainant has failed to prove that the accused ever threatened to kill the complainant, the accused were acquitted of the charges vide judgment dated 21.3.2016.

Learned counsel for the applicant has argued that it is on the basis of prima facie evidence the accused were charge-sheeted for commission of offence under Sections 447, 506, 149 IPC, but without considering the fact that the applicant has proved the case beyond reasonable doubt that he is owner in possession of the land i.e. khasra No.3/3 and constructed a house within the abadi of Village Mandkol, the trial Court has committed legal error in acquitting the accused. The findings of the Civil Court are *per se* admissible in evidence wherein possession and ownership over the specific khasra No.3/3 has been established. The demarcation report dated 29.8.1996 has established the possession by Sita Ram etc. who are the ancestors of the applicant.

I have heard learned counsel for the applicant.

The applicant has filed the complaint against the accused with the allegation that on 28.1.2010 at about 3 PM all the accused came and started demolishing the wall constructed over Khasra No.3/3 and this khasra number was held to be in possession of the applicant-complainant by the Court of learned Additional District Judge, Faridabad vide judgment dated 15.12.2016. The trial Court has recorded a finding that on the basis of oral and documentary evidence on record that the complainant has illegally encroached the rasta chowk and the proceeding for removal of illegal encroachment was conducted on the order of SDM, Palwal. On 28.1.2010 the illegal encroachment made by the complainant at rasta chowk was removed by the administration and so far as Kikar trees and bushes were concerned, after obtaining permission from the Forest Department, the trees were auctioned. No demolition of wall was made during illegal encroachment.

In this manner, the complainant has failed to establish that any wall was demolished during the illegal encroachment. Thus, no ground for interference is made out.

Dismissed.

July 26, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No