

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

CRM No.A-894-MA of 2013 (O&M)
Date of decision: January 12, 2017

Dharam Veer

...Applicant

Versus

Rampal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ravi Kant Sharma, Advocate
for the applicant.

None for the respondents.

INDERJIT SINGH, J.

Applicant-Dharam Veer has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Ram Pal and others respondents, challenging the impugned judgment dated 20.07.2013 passed by learned Judicial Magistrate Ist Class, Hisar, vide which 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, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Dharam Veer filed a complaint against accused Rampal, ASI, Mahender Singh EHC and Bansi Lal Constable, Police Post, Cantt. Hisar, under Sections 166, 167, 323, 342, 409, 506/34 IPC. The brief averments of the complaint as noted down in the judgment passed by learned JMIC, Hisar, are as under:-

“2. Brief facts as averred in the complaint are that complainant is the permanent resident of Panchkula and deals

in sale and purchase of law books in different civil courts. On 21.11.2006, on the basis of false and fake complaint, accused no.2 Mahinder Singh EHC and Bansilal, accused No.3 arrested him (complainant) and his nephew Sandeep and they were brought to Police Post Cantt. Hisar at about 11.30 p.m. at night. Accused no.1 Rampal ASI was already present there. Complainant was given beatings by the accused, to which complainant protested and remarked that he would complaint to higher officers whereupon all the accused intimidated him that they would kill him and his nephew. Accused also obtained his signatures as well as of his nephew on several blank papers and they apprehend that accused may use those papers against him and his nephew. Complainant was having an amount of Rs.95,000/- with him as received from various persons by selling Law Books at Hisar, Fatehabad, Hansi and Siwani. Accused retained that amount of Rs.95000/- and his wrist watch illegally. He moved application for superdari of his car which was also retained by the accused with some law books. In reply to that application, accused no.1 had indicated that an amount of Rs.15090/- only was recovered from the jamatalashi of complainant, instead of actual amount of Rs.95000/- and the wrist watch. On 22.11.2006 he and his nephew was released and thereafter accused No.1 Rampal along with two unknown persons took him forcibly and kept him at unknown place for the whole night of 22.11.2006 and released him on noon of 23.11.2006 after illegally confining him. Thereafter, he went to General Hospital, Hisar and got himself medically examined. He moved application to S.P. Hisar on 24.11.2006 and his application was marked to DSP HQ Hisar. Upon preliminary enquiry DSP also found accused guilty and advised complainant not to take any action against the accused and to compromise the matter. Hence, the present complaint.”

On the basis of preliminary evidence, accused were summoned under Sections 323, 342, 506, 166 read with Section 34 IPC. After the pre-charge evidence, accused were charged under Sections 166, 323, 506 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

Learned JMIC, Hisar, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 20.07.2013.

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

Notice of motion was issued. Earlier, learned counsel for the

respondents was appearing but today, none appeared on behalf the respondents.

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

From the record, I find that the findings given by the Court below are correct, as per evidence and law. In no way, the findings can be held as perverse i.e. against the evidence. No illegality has been committed while acquitting the accused respondents.

The accused were charged under Sections 166, 323, 506 read with Section 34 IPC. The alleged incident took place on 21.11.2006 when the complainant was in the custody of the accused. The Court discussed the cross-examination of the complainant Dharamveer, who admitted that a case had been instituted against him and in that case ASI Ramphal, HC Mahender, Ved Parkash, ASI Rajender, Rajesh and Umed had got their statements recorded. As per the version of the complainant, case titled as "State vs. Dharamveer" bearing FIR No.1047 was registered on the intervening night of 21/22.11.2006 under Section 356 IPC against him and his nephew Sandeep and they were sent directly to the jail and were never produced before the Court. The Court found this version not believable. In the FIR case, accused can be sent to jail only when the Court passes the order for judicial custody. Therefore, the statements of these witnesses that they were not produced before the Court and were directly sent to the jail, cannot be believed and has rightly been disbelieved by the Court below.

Secondly, the Court also held that there is no document nor any witness or record has been shown that the complainant and his nephew were directly sent to the jail. The complainant further stated in the cross-

examination that D.V.Soni, Advocate had represented him and his nephew Sandeep in case under Section 356 IPC when they were arrested on the intervening night of 21/22.11.2006 and had got them bailed out from the Court.

The Court held that neither D.V.Soni, Advocate has been examined nor any document has been produced on the record to show the fact regarding injuries or beating given to the complainant etc. The Court discussed the medical evidence where PW-3 Dr.Dalel Singh, who found five injuries on the person of the complainant. 5th injury was complaint of pain and remaining four injuries were simply bruises and abrasions. The doctor, in further cross-examination after the charge stated that these injuries can be self-suffered and these injuries can be within 4-6 hours and the injured was examined on 23.11.2006. Therefore, the Court below found that it also creates doubt in the complainant version.

In view of the evidence on record, I find that the trial Court has appreciated the evidence in right perspective. 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.

In view of the above discussion, I find that the impugned judgment dated 20.07.2013 passed by learned JMIC, Hisar, 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.

January 12, 2017

Vgulati

Whether speaking/reasoned

Whether reportable

(INDERJIT SINGH)

JUDGE

Yes

No