

THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CRM-A-1499-MA of 2016 (O&M)

Date of Decision: August 17, 2017

Boota Singh

.....Applicant

Versus

Jagroop Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Navjinder Singh Sidhu, Advocate for the applicant

ARVIND SINGH SANGWAN, J.

The respondents had faced trial in a complaint bearing No. 22 /01/11. 2013 under Section 500 of the Indian Penal Code, 1860 (for short 'IPC') filed by the applicant. The trial Court vide judgment dated 3.3.2016 ordered the acquittal of the respondents of the charges framed against them and the appeal filed against the said order was also dismissed by the appellate Court vide order dated 16.3.2016. Hence, the present application for grant of leave to appeal under Section 378(4) of the Code of Criminal Procedure, 1973 has been filed by the applicant-complainant.

The case set up in the complaint is that the respondents--accused Nos. 1 to 4 are managing affairs of Gurdwara Committee and they used to threaten the complainant that they will teach him a lesson if their cows entered in the open space of the Gurdwara. It is

further alleged that accused Nos. 1 to 4 in criminal conspiracy with each other aired a rumour in the village that the petitioner-complainant has stolen inverter, batteries etc. from Gurdwara Sahib and Police detained the complainant. They told the villagers that the complainant had stolen articles of Gurdwara Sahib and he was given beating by the Police after blackening his face. It was further alleged that the petitioner was released from the custody of respondents Nos. 5 and 6, who are Police Officials, and despite his filing of complaint, they have not taken any action. On the basis of the preliminary evidence, the trial Court summoned the accused Nos. 1 to 4 only to face the trial for the offence punishable under Section 500 IPC. On appearance, they pleaded not guilty and claimed trial. Thereafter, the complainant examined three witnesses i.e. Boota Singh, complainant himself as CW1, Kuldeep Kaur, CW2 and one Balwant Singh as CW3. On completion of evidence statement of respondent-accused was recorded under Section 313 of the Code of Criminal Procedure, 1973 in which they pleaded false implications.

In defence, accused-Gobinder Singh appeared as DW1 and Boota Singh, member of Panchayat was examined as DW2. The trial Court, after conclusion of the evidence, vide its judgment dated 3.3.2016, acquitted respondents No. 1 to 4 -accused. Thereafter, the petitioner filed an appeal before the appellate Court which was dismissed holding it as not maintainable. Hence, the present petition has been filed along with application for seeking condonation of delay of 60 days in filing the appeal.

Learned counsel for the applicant has submitted that respondents

No. 1 to 4- accused in conspiracy with each other orally published and aired a rumour that the petitioner-complainant was beaten by the Police on account of stealing various articles from Gurudwara Sahib and his face was blackened and,thus, it has lowered the moral and intellect of the complainant in the estimation of the other villagers. It is also submitted that the accused persons have not given any explanation that this statement made by them is under good faith or the accusation was on the basis of genuine belief.

I have heard the learned counsel for the applicant and have gone through the record available on the file carefully.

The petitioner, in the original complaint, has levelled various allegations including the allegation of beating etc. but the trial Court has summoned the accused only under Section 500 IPC by disbelieving the version given by the complainant that he was given beatings by accused Nos. 5 and 6 and, thus, this part of the complaint was not believed and accused Nos. 5 and 6 were never summoned by the trial Court. The evidence led by the petitioner-complainant that oral publication made by the accused persons has lowered his reputation is not sufficient to hold the accused guilty as it is not proved on record that the said defamatory statement was either published or harmed the reputation of the complainant as per explanation clause 4 to Section 499 IPC. Complainant, while appearing as CW1, has not deposed that on account of publication of the said statement, his reputation was adversely affected and,therefore, the deposition of this witness that the accused had levelled allegation of theft against him, is not sufficient to hold the accused guilty of offence

punishable under Section 500 IPC. The other two witnesses produced by the complainant i.e. CW2 Kuldeep Kaur and CW3 Balwant Singh have also not deposed that on account of the publication of the statement by the accused persons, reputation of complainant was adversely affected. Therefore, there is no evidence on record to hold that the respondents-accused are guilty of offence regarding lowering of moral or intellect character or credit of the complainant. The trial Court, on the basis of appreciation of evidence, has recorded a finding that it is not proved from the prosecution evidence that the offence punishable under Section 500 IPC is made out.

Hon'ble the Supreme Court in **Allarakha K.Mansuri vs. State of Gujarat** 2002(1)RCR(Criminal) 748, has held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

A Division Bench of this Court in **State of Punjab v. Hansa Singh** 2001(1) RCR (Criminal) 775, while dealing with an appeal against acquittal, has held as under:-

“We are of the opinion that the matter would have to be examined in the light of the observations of the Hon'ble Supreme Court in **Ashok Kumar vs. State of Rajasthan, 1991 (1)scc 166**, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.”

In the facts and circumstances, the reasons recorded by

the learned trial Court in acquitting the accused are just and proper and there is no merit in the criminal miscellaneous application seeking leave to appeal in terms of Section 378(4) of the Code Criminal Procedure, 1973. Accordingly, the criminal misc. application seeking leave to appeal is dismissed.

Since petition has been dismissed on merit, application seeking condonation of delay of 60 days in filing the appeal is also dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

August 17, 2017
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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No