

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

CRM-A-1557-MA of 2016.

Decided on:-21.08.2017.

Kura Ram.

.....Applicant.

Versus

Dharam Singh and others

.....Respondents.

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

Present:- Mr. V.B. Aggarwal, Advocate
for the applicant.

HARI PAL VERMA, J.

The applicant has filed the present application under Section 378(4) of the Code of Criminal Procedure for grant of leave to appeal against the judgment dated 23.05.2016 passed by learned Additional Sessions Judge, Kurukshetra, whereby the respondents No.1 to 8 were acquitted of the charges levelled against them in case bearing FIR No.92 dated 18.06.2013 under Sections 148, 323 and 506 read with Section 149 of the Indian Penal Code as well as Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, the SC/ST Act) registered at Police Station Babain, District Kurukshetra.

Briefly stated, case of the applicant-prosecution is that on 16.06.2013 at about 2.00 P.M. in the area of village Babain, the respondents No.1 to 8-accused being the members of an unlawful assembly were armed with deadly weapons i.e. Dandas and bricks. The accused, in prosecution of

the common object of that unlawful assembly, had caused hurt to complainant Kura Ram (applicant herein). They also threatened the complainant that if again an opportunity comes, the complainant would be done to death. Besides this, they also used caste based remarks against the complainant.

After considering the evidence produced on record and hearing arguments of both the sides, learned trial Court vide judgment dated 23.05.2016 acquitted the respondents No.1 to 8 of the charge framed against them.

Aggrieved against the aforesaid judgment, the complainant has filed the present application under Section 378(4) Cr.P.C. for grant of leave to appeal.

Learned counsel for the applicant-complainant has argued that the applicant received injuries in the incident, but those injuries were not considered by learned trial Court in the impugned judgment dated 23.05.2016. He has further argued that under Section 14 of the SC/ST Act, a provision for constitution of Special Court has been provided, but the present case has not been dealt with by the competent designated Court. When the case is required to be tried by the Special Court and it has not been done so, the judgment passed by the Court, which is not a designated Court, is a nullity.

He has further argued that Dr. Arvind Kumar (PW7) in his examination-in-chief has deposed that he found the following injuries on the person of the injured:

1. Lacerated wound of .5 x .5 cm size muscle deep over left front region of head. X-ray advised.
2. Redish dis colouration with pain over upper back.

3. Bluish redish colouration below and lateral to right eye.
4. Pain and swelling left chest.
5. Bluish redish dis colouration B/L side of neck.

Similarly, Dr. Arvind Kumar (PW7) in his cross-examination has deposed as under:

“The injury No.1 could be sustained due to fall on the hard surface but this injury cannot be self inflicted. Injuries No.2 and 3 can be caused by danda/bindu and cannot be self inflicted. Injury No.4 was a pain and swelling which I have observed at the time of examination. Injury No.5 was due to by stressing throat with hands.”

He has further contended that the impugned judgment dated 23.05.2016 passed by learned trial Court is not sustainable in the eyes of law. There is sufficient evidence on the file against the accused, which connects them with the commission of crime and, therefore, the respondents No.1 to 8 are liable to be convicted and sentenced in accordance with law.

I have heard learned counsel for the applicant-complainant.

Perusal of the record shows that the case has been tried by learned Additional Sessions Judge, Kurukshetra. As per notification No.S.O.85/C.A.33/1989/S.14/2011 dated 02.11.2011, in exercise of the powers conferred by Section 14 of the SC/ST Act, the Governor of Haryana has specified the Courts of all the Sessions Judges and Additional Sessions Judges (except the Additional Sessions Judges (Adhoc), Fast Track Court, in every district, in the State of Haryana to be a Special Court to try the offences under the said Act. Thus, the Court of Additional Sessions Judge,

Kurukshetra is fully competent to try the present case and there is no substance in the contention raised by learned counsel for the applicant that the case has not been dealt with by the competent Court.

The allegation of the complainant is that he (complainant) belongs to Scheduled Caste and the respondents No.1 to 8 had abused him by using caste based remarks. However, mere accusation of chiding a member of Scheduled Caste/ Scheduled Tribe community by his caste name would not suffice to constitute an offence under the SC/ST Act unless it has been made to undermine the dignity of a member of the said category and at a place, within full public view. In the present case, the applicant has failed to adduce any independent evidence to prove such allegations except himself as PW1 and his brother Barkha Ram as PW12. Interestingly, one independent witness Amar Singh as PW2 had denied that any caste based remarks were made in his presence. Though the prosecution has also examined another independent witness, namely, Jai Pal as PW9, but he did not support the case of the prosecution and was declared hostile. Thus, when the applicant has failed to prove the ingredients of Section 3 of the SC/ST Act, the respondents No.1 to 8 have rightly been acquitted by learned trial Court.

So far as the injuries on the person of applicant-complainant are concerned, Dr. Arvind Kumar (PW7) has stated in his examination-in-chief that there was a lacerated wound of .5 x .5 cm size muscle deep over left front region of head for which x-ray was advised. However, in his cross-examination, this witness had deposed that the said injury i.e. injury No.1

could be sustained due to fall on the hard surface as well but this injury cannot be self inflicted.

As per the allegations of the applicant, the respondents No.1 to 8 had caused injuries to him with bricks and Dandas. However, the oral testimony of the applicant does not match with the medical evidence produced as on record, because injury No.1 on the person of applicant is simple in nature. There is no other injury on the person of applicant-complainant except some reddish discolouration on the back, bluish reddish discolouration below the lateral to right eye, pain and swelling on the left chest and bluish reddish discolouraion on the side of neck.

Thus, the applicant has failed to show any misreading of evidence by the trial Court and has not pointed out any legal error in the judgment under challenge which may warrant interference by this Court. When no evidence to connect the accused with the alleged crime is available on record, no case is made out for any interference in the impugned judgment of acquittal passed by the trial Court.

Accordingly, the present application, being devoid of any merit, is dismissed. Leave to appeal is declined.

August 21, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No