

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-28423-2016 IN/and
CRM-A-1632-MA-2016

Date of Decision: 17.5.2017

Iqbal Khan

....Appellant.

Versus

Subhash and another

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU.**

PRESENT: Mr. Rahul Jaswal, Advocate for the applicant-appellant.

AJAY KUMAR MITTAL, J.

CRM-28423-2016

For the reasons stated in the application which is supported by an affidavit, the delay of 31 days in filing the application for grant of leave to appeal is condoned.

CRM stands disposed of accordingly.

CRM-A-1632-MA of 2016

1. The present application has been filed under Section 378(4) of the Code of Criminal Procedure, 1973 (in short “the Code”) by the complainant-Iqbal Khan for grant of leave to appeal against the judgment of acquittal dated 7.4.2016 passed by the Additional Sessions Judge, Panipat.
2. A few facts necessary for adjudication of the instant application as narrated therein may be noticed. The applicant-appellant filed a complaint under Sections 307, 506, 120-B, 34 of the Indian Penal Code

(IPC) and Section 25 of the Arms Act, against the respondents alleging that on 2.6.2008, he was residing at Idgah Colony, Panipat and respondent No.1 along with his mother respondent No.3 was also residing in his neighbourhood. There was some dispute between the complainant and respondent No.3 which was later on compromised on 14.6.2008. On 16.6.2008, respondent No.3 telephonically asked the appellant about his whereabouts on which he told that he is in Gohana and would be at his native place at village Sanoli Kalan during evening hours. At about 8.00 p.m. when he reached near vegetable market, Panipat to meet his brother Dilpukar and thereafter they went to village Sanoli Kalan in a jeep and then in a tractor. They reached at village Jhamba Chowk and from there, they started walking towards village Sanoli Kalan. In the meantime, from the side of Panipat, the respondents came on a motorcycle and stopped near them. Respondent No.3 gave a lalkara to shoot them upon which respondent No.2 fired a shot with his country-made pistol upon the appellant but the said fire was missed. Thereafter, respondent No.1 fired a gun shot upon the appellant which hit on his upper part of the right arm. As a result thereof, the appellant fell down and became unconscious. On raising alarm by Dilpukar, all the respondents fled away from the spot by threatening of the dire consequences. The brother of the appellant made a telephonic call to his native place upon which Ali Hassan and his brother Noora came at the spot and they shifted the appellant to the General Hospital, Panipat. Upon the statement of the appellant, FIR No. 189 dated 19.6.2008, under Section 307 of the IPC but no action was taken by the police. Accordingly, the appellant filed a complaint against the respondents. On the basis of the preliminary evidence led by the applicant-

appellant, the trial Court vide order dated 23.4.2012 summoned the respondents to face trial under Sections 307, 506 read with Section 34 of the IPC and Section 25 of the Arms Act. Respondent No.1 could not appear before the trial court despite issuance of notices and warrants and as such was declared a proclaimed offender vide order dated 16.9.2013. After appearance of respondents No.2 and 3, the case was committed to the Court of Session by the Judicial Magistrate vide order dated 18.1.2014. The charge was framed under Section 120-B, 307 read with Section 34 of the IPC against respondents No.2 and 3 and charge under Section 25 of the Arms Act was also framed against respondent No.2 vide order dated 5.3.2014 to which they pleaded not guilty and claimed trial. To prove his case, the complainant-appellant besides examining himself as PW1, examined Dilpukar as PW2, Dr. Sanjiv Gupta, Medical Officer as PW3 and ASI Sushil Kumar as PW4.

3. On completion of evidence, statements of respondents No.2 and 3 under Section 313 of the Code were recorded in which they pleaded innocence and denied the allegations of the complainant-appellant. In their defence evidence, the said respondents had examined Ali Hassan as DW1 and Yashpal Gupta, DRK, Record Room as DW2.

4. The trial Court on appreciation of the evidence led by the parties, acquitted respondents No.2 and 3 vide judgment dated 7.4.2016 of the charges framed against them. Aggrieved by the said judgment, the applicant has filed the instant application for grant of leave to appeal.

5. After hearing learned counsel for the applicant-appellant, we do not find any merit in the application for grant of leave to appeal.

6. A perusal of the record shows that the complainant-PW1 Iqbal

and his brother Dilpukar-PW2 are the material witnesses and there are contradictions in their version regarding the mode and manner in which the occurrence had occurred. In his complaint, Ex.P1, the complainant had stated that on 16.6.2008 when respondent No.3 (respondent No. 2 herein) made a telephonic call to him, he was in Gohana whereas in his statement as PW1, he had stated that on 16.6.2008, he was in Rohtak and during his cross-examination he stated that on 16.6.2008, he was not possessing any mobile phone. Further, the complainant in his complaint had stated that on receipt of the fire arm injury, he fell unconscious and regained consciousness on the next day. However, while appearing in the witness box as PW1, the appellant stated that when accused fled away from the spot, he became unconscious and regained consciousness on the next date, but during his cross-examination, PW3 Dr. Sanjiv Gupta stated that the patient (appellant) was conscious at the time of examination. PW3 had also stated that although the appellant had received fire arm injury but as per the x-ray, no bone injury was received by him. PW3 had also stated that the possibility of plantation of offence cannot be ruled out.

7. Further, a perusal of evidence shows that the appellant during his cross-examination stated that he never lived with respondent No.3 (respondent No. 2 herein) as her husband whereas as per the affidavit Ex.D1 on which he had admitted his signatures, the appellant had lived with respondent No.3 (respondent No. 2 herein) for about 14 years and had also solemnized the marriage with her. It is admitted by him in his cross-examination that the daughter of respondent No.3 (respondent No. 2 herein) got FIR No.248 dated 5.7.2008, under Sections 376, 506 of the IPC against him at Police Station Model Town Panipat. The respondents in their

defence evidence had tendered copy of FIR No. 248 dated 5.7.2008 Ex.D2. The trial Court had held that the present case is a counter blast of FIR No.248 dated 5.7.2008, Ex.D2. The occurrence regarding the FIR, Ex.D2 allegedly took place on 3.6.2008 whereas the alleged date of occurrence in the present case is 16.6.2008. Therefore, the present occurrence was subsequent to the occurrence dated 3.6.2008 which resulted into registration of FIR No. 248 dated 5.7.2008.

8. In view of the above discussion, the trial Court had held that the complainant had not been able to prove his case against the respondents beyond all reasonable doubt and finding the discrepancies and contradictions in the evidence of the witnesses, acquitted them of the charges framed against them.

9. Learned counsel for the appellant was unable to show any infirmity in the findings recorded by the trial Court warranting interference by this Court. Accordingly, finding no merit in the application for grant of leave to appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

May 17, 2017
gbs

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes