

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No.A-2024-MA of 2016 (O&M)
Date of decision: August 30, 2017

Het Ram
...Applicant

Versus

State of Haryana and others
...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ashok Kaushik, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Het Ram has filed this application under Section 378 (4) Cr.P.C. seeking permission for leave to appeal against State of Haryana and other respondents, challenging the judgment dated 08.09.2016 passed by learned Sub Divisional Judicial Magistrate, Hodal, whereby 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 Het Ram filed a complaint against Vijay and other accused under Sections 447, 323, 325, 506, 341, 342 and 148 IPC. The brief averments of the complaint as noted down in the judgment passed by learned SDJM, Hodal, are as under:-

son of Shri Ram, on the averments that he is the agriculturist in Andhua Patti and is a law abiding Citizen. He has further submitted that accused are also residents of Gharam Patti Hodal and complainant knows them personally. On 3.12.2006 at around 1.00 PM complainant were present at his field along with his son at Hodal for cultivation when the above named accused in furtherance of their common intention having lathies and Dandas in their hands came to the fields of complainant and forcibly tried to took the possession of the fields of the complainant. When complainant and his son stopped them from doing so, then the accused persons got angry and started abusing them. Then Vijay gave Lalkara **“Inhe Jaan se Maar Do, Ye Jane Na Paye aur Inke Khet Par Kabza Kar Lo”**. On resistance by the complainant and his son Rambir all the above said persons started giving lathi and danda blows to them. Bharat Pal and Nawal took hold of the complainant and Fundi gave lathi blow on his left foot. Badam gave a lathi blow on his ankle. Major gave a lathi blow on the right thigh and Fundi again gave second lathi blow on the fingers of his left finger and when his son Rambir came to rescue the complainant then the assailants Bablu, Mahesh and Bhisham gave injuries to Rambir who himself told about their injuries. When both of them raised alarm then his son Jeet Ram and Dhan Singh residents of Bahin who were passing through the road came there and rescued them from the accused persons. The above named accused persons have surrounded the complainant and his son Rambir for a long time and does not allow them to goto Police Station and threatened them that today they were releasing them and on finding opportunity they will definitely kill them. It has been further submitted that complainant has given the complaint in Police Station, Hodal on 3.12.2006 but no action was taken by the Police till date. After that one application diary no.1058-P dated 9.6.2007 was given to Superintendent of Police, Rural Dehat, Palwal who marked the same to Deputy Superintendent of Police but no action was taken on it. Medical examination of the complainant and his son Rambir was conducted at Government Hospital, Palwal in which fracture was seen in the X-ray of the complainant. Hence, the present complaint.”

In pre-charge evidence, complainant examined himself as CW-1, CW-2 Rambir, CW-3 Jatender, CW-4 Dhan Singh, CW-5 Dr.Mahender Dheeraj and CW-6 Dr.V.P.Gupta. The Court after hearing the parties, charged Vijay, Major, Bharat Pal, Bablu, Badam and Mahesh under Sections 323, 325, 342, 447, 506 read with Section 149 IPC. Fundi alias

Gian Singh and Nawal were declared proclaimed person. Accused Fundi alias Gian Singh surrendered before the Court and confessed his guilt and sentenced to already undergone. Later on, accused Nawal surrendered and his trial was ordered to be separated from the remaining accused persons.

Learned SDJM, Hodal, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondents vide impugned judgment dated 08.09.2016.

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

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

The perusal of the findings given by learned Magistrate shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. 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. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned Court below.

Learned trial Court discussed the cross-examination of the complainant that out of the suit property, he has sold some of the area. He further admitted that he has sold around 900 sq. yards to Bijender, Sheela and Mahender and they are in possession of the same. However, he further stated that he does not know that whether those three persons had done any full and final agreement with the accused persons as per which they had given possession to accused Vijay, Major and Bablu. The complainant also admitted that no partition has taken place between him and person to whom

he has sold land. He also stated that except the street, he has no possession of the area adjacent to the road, however, the above said persons have forcibly taken the possession on the land adjacent to the road. He next admitted that possession was given to some persons and some persons have forcibly taken the possession. He has given the possession to the persons who were already co-sharers. He also admitted that the alleged occurrence took place on the land adjacent to the road. The complainant specifically admitted that he is continuously interfering in the area of land sold to Sheela and Bijender because they have not given him money of his share sold to them. He also admitted that his fields are three acres away from the place of incident.

The occurrence is stated to be occurred on 03.12.2006 but the injured have been examined on 04.12.2006. Further, the version also looks doubtful that nine persons had come and gave simple injuries, except one. It is also admitted that Bharat and Nawal also got registered a case against them on 03.12.2006 and police has arrested them from his house and also took the tractor. CW-3 stated in cross-examination that he heard noises of 'Bachao Bachao' and at that time, he was away from the place of occurrence at a distance of about one acre.

The petitioner nowhere mentioned in the complaint regarding the occurrence vide which the main FIR has been got registered. It is case of version and cross-version. This fact also shows that the complainant has tried to conceal the genesis of the occurrence. Furthermore, complainant has examined himself as CW-1, CW-2 Rambir and CW-3 Jitender, eye witnesses who are son of the complainant. No independent witness has

been examined to prove the version. The occurrence took place on

03.12.2006 and the complaint was filed on 18.07.2007 after a long delay, which has not been explained.

From the perusal of the judgment passed by the Court below, I find that the findings have been given by correctly appreciating the evidence in right perspective. In no way, the judgment can be held as perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 08.09.2016 passed by learned SDJM, Hodal, 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.

August 30, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No