

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

Criminal Misc.-A No. 2173-MA of 2016(O&M)

Date of Decision: May 15 , 2017.

Baljit Kaur APPELLANT (s)

Versus

Harwinder Singh and others RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ravinder Singh, Advocate
for the applicant/appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

The applicant/appellant is aggrieved of the acquittal of respondents No.1 to 3 of the charges under Sections 323/354/506 read with Section 34 IPC by the learned Additional Chief Judicial Magistrate, Sri Muktsar Sahib vide judgment dated 06.09.2016.

Brief facts of the case are that, a complaint under Sections 354/506/323/341 read with Section 34 IPC was filed by the applicant/appellant on 13.06.2014. It is averred that the complainant went to attend the hearing of her case on 14.03.2014 related to proceedings initiated under Section 138 of the Negotiable Instruments Act, 1881 (for short, the 'Act'), by her against respondent

No.1 – Harwinder Singh in respect to an amount of ₹4,00,000/-. It is alleged that when the complainant came out of the court at 2.30 p.m. all the accused followed her. Respondent No.1 started abusing her in a loud voice. All the accused persons physically abused her while threatening that she would be taught a lesson for filing a case against them. Respondent No.1 – Harwinder Singh forcibly tugged away the Dupatta (long scarf) from her neck. The accused persons started humiliating her and indulged in obscene acts. Respondent No.1 slapped her face. When the complainant cried for help, the accused persons threatened that she would be done to death in case she came to the court again to attend the proceedings of the case filed by her. The complainant went back home and narrated the entire incident to her family members. Thereafter an application was moved to SHO, Sri Muktsar Sahib on 18.03.2014. It was assured that action shall be taken but the police did not take any action. Accordingly, complaint was filed by the applicant/appellant on 13.06.2014. Reason behind the occurrence, it is stated, is that the complainant filed a case under Section 138 of the Act against respondent No.1 in respect to a cheque of ₹4,00,000/-. The accused wanted to intimidate the applicant in order to prevent her from contesting the said case.

The complainant was examined as CW1 in the preliminary evidence. Respondents No.1 to 3 were summoned by the learned trial court to face trial for the offences punishable under Sections 323/354/506 read with Section 34 IPC vide order dated 24.04.2015. The complainant (CW1) tendered into evidence a certified copy of zimni order dated 14.03.2014 as Ex.C6 as well as certified copy of the complaint in the complaint case titled as 'Baljit Kaur v. Harwinder Singh' under Section 138 of the Act as Ex.C7. Charges were framed against the

respondents. They pleaded not guilty and claimed trial.

Apart from the complainant (CW1) herself, none else was examined in the evidence after charge. The accused/ respondents in their statements under Section 313 Cr.P.C. while denying all the incriminating evidence put to them, pleaded innocence and false implication. Respondent No.1 – Harwinder Singh specifically stated that no incident as narrated by the complainant took place on 14.03.2014. No hurt was caused to the complainant, neither was her modesty outraged.

Respondent No.1 further stated that Jagsir Singh son of Chhinder Singh @ Joginder Singh resident of Sri Muktsar Sahib, nephew of the complainant, stole blank signed cheques of respondent No.1 from his poultry farm at Sri Muktsar Sahib with a dishonest intention. Jagsir Singh handed over one of the stolen blank signed cheques to the complainant, which was forged by her. Another stolen blank signed cheque was given by Jagsir Singh to his own father Chhinder Singh @ Joginder Singh who filed another complaint against respondent No.1 in respect to ₹2,00,000/-.

FIR in this regard was registered against Jagsir Singh and during investigation, two blank signed cheques were recovered from Jagsir Singh. Trial in the said case was stated to be pending.

It is further stated that both the complaints under Section 138 of the Act filed against respondent No.1 by the present complainant as well as Joginder Singh were dismissed. No appeal was filed against the said decisions dismissing the complaints. Present complaint, it is stated, has been filed with an ulterior motive to harass respondent No.1. An inquiry was conducted by the police at

Police Station City Sri Muktsar Sahib into the allegations raised by the complainant. Allegations levelled by the complainant were found to be false on 22.09.2014.

Similar pleas have been taken by the other accused Lal Chand and Rammo Singh. Puneet Gupta, Assistant Record Keeper, Sri Muktsar Sahib (DW1) and HC Jagtar Singh (DW2) were examined in defence. Accused tendered into evidence certified copy of judgment dated 04.10.2014 titled as 'Baljeet Kaur v. Harwinder Singh' passed by the learned Judicial Magistrate First Class, Sri Muktsar Sahib as Ex.D1, certified copy of judgment dated 25.05.2015 titled as 'Joginder Singh v. Harwinder Singh' passed by the learned Chief Judicial Magistrate, Sri Muktsar Sahib as Ex.D2, certified copy of judgment dated 29.08.2014 titled as 'Joginder Singh v. Harwinder Singh' passed by the learned Chief Judicial Magistrate, Sri Muktsar Sahib as Ex.D3, certified copy of cheque dated 29.05.2013 as Ex.D4, certified copy of complaint dated 11.07.2013 under Section 138 of the Act in case titled as 'Baljeet Kaur v. Harwinder Singh' as Ex.D5, certified copy of cheque bearing No.135166 dated 06.06.2013 as Ex.D6, certified copy of charge-sheet dated 16.10.2014 as Ex.D7, certified copy of FIR No.183 dated 04.10.2013 as Ex.D8, certified copy of report under Section 173 Cr.P.C. in FIR No.183 dated 04.10.2013 as Ex.D9, certified copy of the evidence of Jagsir Singh under Section 27 of the Indian Evidence Act as Ex.D10, certified copy of recovery memo regarding cheque as Ex.D11, certified copy of cheque bearing No.135167 dated 06.06.2013 as Ex.D12 and certified copy of blank cheque bearing No.135168 as Ex.D13.

The following points were culled out for determination by the

learned trial court:-

- “1. Whether on 14.03.2014 at about 2.30 p.m. in the area of court complex, Sri Muktsar Sahib, accused Harwinder Singh in furtherance of common intention with his co-accused voluntarily caused hurt to complainant Baljeet Kaur?
2. Whether on the same date, time and place, all the above named accused in furtherance of common intention assaulted complainant Baljeet Kaur intending to outrage or knowing it to be likely to outrage the modesty of complainant Baljeet Kaur?
3. Whether on the same date, time and place, all the above named accused in furtherance of common intention committed criminal intimidation by threatening Baljeet Kaur with dire consequences? If so, its effects.

Learned trial court on considering the facts and circumstances of the case as well as the evidence on record, concluded that the complainant has miserably failed to prove her case against the accused beyond the shadow of reasonable doubt therefore, respondents No.1 to 3 were acquitted of the charges against them. Aggrieved therefrom, the complainant seeks leave to appeal against the said decision dated 06.09.2016 of the learned trial court.

Learned counsel for the applicant/appellant vehemently argues that the incident in question is proved to have taken place on 14.03.2014. The Zimni order Ex.C6 clearly show the presence of the accused on the court premises on the said date. It is submitted that the accused themselves admitted their presence at the spot. Respondent No.1 – Harwinder Singh stated that the complainant started arguing with him in the Court complex, therefore the incident in question is clearly proved. Respondent No.2 – Rammo Singh admitted that a case regarding 'Pahi' adjoining his land at Balamgarh road is pending against

Chhinder Singh, Avtar Singh, Nachhattar Singh son of Karnail Singh. He saw the complainant fighting with respondent No.1 when he visited his Advocate in the court complex at Sri Muktsar Sahib. Similarly, respondent No.3 – Lal Singh, it is submitted, admits that the presence of the complainant at the spot. It is urged that in these circumstances the learned trial court has grossly erred in acquitting respondents No.3 to 5. Furthermore, dismissal of the complaint under Section 138 of the Act or non-filing of the appeal against the said decision by the complainant cannot lead to an inference that no such incident as alleged by the complainant ever took place. In these circumstances, it is submitted that the impugned judgment passed by the learned trial court be set aside and respondents No.3 to 5 be convicted for the offences punishable under Sections 354/506/323 read with Section 34 IPC.

I have heard learned counsel for the applicant/appellant and have gone through the file/record of the case with his able assistance.

It is vehemently argued by learned counsel for the applicant/appellant that presence of the accused persons in the court premises on the relevant date is proved therefore, the occurrence is automatically admitted to have taken place. There is a basic flaw in this argument. Even if it is proved that the accused persons were present in the court premises on 14.03.2014 at the relevant time, it cannot be presumed that the incident as alleged by the complainant had taken place. To convict respondents No.3 to 5 for the offences punishable under Sections 323/354/506 read with Section 34 IPC, proof of mere presence at the Court premises is not sufficient.

It is not in dispute that Chhinder Singh @ Joginder Singh son of Karnail Singh is the brother-in-law (husband's brother) of the complainant. Said

Joginder Singh has two sons, namely, Gurmeet Singh and Jagsir Singh. The applicant/appellant however denied having any knowledge regarding the FIR lodged against Jagsir Singh etc. in respect to misuse of blank signed cheques of respondent No.1. She further denied any knowledge regarding any complaint that Joginder Singh had filed under Section 138 of the Act against respondent No.1. In her statement before the court she alleged that respondent No.1 was present in the court premises. She asked respondent No.3 – Lal Singh to help her for recovery of her ₹4,00,000/- from Harwinder Singh but he refused. It is further stated by the complainant that applications Ex.C1, Ex.C3 and Ex.C5 were submitted after due consultation with her lawyer. It is a matter of record that the Orderly of the court was present when her case was called out. The Gunman and Naib Court were also present at that time. No independent witness has been examined to prove the incident in question. It is a matter of record that except the complainant's testimony, there is no other evidence on record to corroborate the facts as mentioned in the complaint. Keeping in view the admitted relationship of the complainant with Jagsir Singh, Joginder Singh etc. and their pending litigation with respondents No.1 and 2, the requirement for corroboration of the complainant's version is not unjustified.

It is further not denied that the complaint submitted by the applicant/appellant was forwarded by the learned Sessions Judge, Sri Muktsar Sahib to the Senior Superintendent of Police, Sri Muktsar Sahib for inquiry. Inquiry was conducted by ASI Kuldeep Singh who recorded the statement of various witnesses including the statement of the complainant. As per the report Ex.DW2/C, the allegations levelled by the complainant were found to be false.

Ex.DW2/B i.e., the inquiry report is duly proved on record by DW2 HC Jagtar Singh. There is no medical evidence on record to prove that any injuries were caused on the person of the complainant.

Learned counsel for the applicant/appellant is unable to point out any substantial or compelling reasons which may warrant interference with the impugned judgment. Acquittal of an accused is not to be interfered with lightly and merely because another view may be possible in a given factual scenario.

The Hon'ble Supreme Court in Mahamad Khan Nathekhan v. State of Gujarat (2014) 14 SCC 589 while reiterating the basic principles has specifically held that in case of acquittal there is a double presumption of innocence in favour of the accused as it stands reinforced, reaffirmed and strengthened by acquittal of the accused, by the trial court.

There is, thus, no perversity, infirmity or illegality in the impugned judgment dated 06.09.2016 passed by the learned Additional Chief Judicial Magistrate, Sri Muktsar Sahib which calls for any interference by this Court. Accordingly, leave to appeal is declined.

May 15, 2017.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No