

CRM-21524-25-2015 in/and
CRM-A-1141-MA-2015 (O&M)

-1-

HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-21524-25-2015 in/and
CRM-A-1141-MA-2015 (O&M)
Date of Decision: October 23, 2017

Joginder and othersApplicants
Versus
Sube Singh and othersRespondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDHIR MITTAL

- | | | |
|----|---|---------|
| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

.....

Present: Mr.B.S.Saroha, Advocate for the applicants.

.....

SURYA KANT, J.

CRM-21525-2015

Prayer in this application is for condonation of delay of 44 days in filing accompanying application seeking leave to appeal. It is averred that the applicant-appellants were wrongly informed that the appeal was to be filed within three months whereas the prescribed time is two months only. Delay is said to have occurred for that *bona fide* mistake.

The plea taken by the applicant-appellants appears to be *bona fide*. Application is allowed. Delay of 44 days in filing the accompanying application seeking leave to appeal is condoned.

CRM stands disposed of.

CRM-A-1141-MA-2015

This application under Section 378(4) Cr.P.C. seeks grant of

leave to appeal against the judgment dated 17.03.2015 passed by the Sub Divisional Judicial Magistrate, Mohindergarh, in a private complaint case titled **Joginder & others vs Sube Singh and others**, whereby the respondents have been acquitted case under Sections 323, 324, 326, 452 and 506 IPC.

[2] We have heard learned counsel for the applicant-appellants at a considerable length and gone through the record.

[3] It emerges out from the facts on record that the occurrence had taken place on 19.07.2006 at about 8.00 p.m. when a group fight took place between the applicant-appellants on one hand and the respondents on the other. FIR No.146 dated 21.07.2006 was registered against the applicant-appellants under Sections 323, 324, 326, 452 and 506 IPC in which they were found guilty by the trial Court and eventually convicted. The applicant-appellants filed appeal against their conviction. The Appellate Court though upheld the conviction but released them on probation. Appellate order was not further challenged by the applicant-appellants and the same has thus attained finality.

[4] It further appears that while the applicant-appellants were facing trial, they filed the instant criminal complaint on 16.07.2009, i.e. after three years of the occurrence, alleging that the respondents were aggressive and caused injuries to the appellants. Learned Sub Divisional Judicial Magistrate has taken cognizance of the fact that the applicant-appellants have chosen to file the complaint after more than three years while they were facing trial in the police case registered at the instance of respondents-

complainant party. The learned trial Court has further noticed the following infirmities in the applicants' version:-

“18. It is pertinent to mention that complainant story is suffering from certain infirmities as it came out in the testimonies of PW1 and PW2 that at the time of occurrence wife of PW1 was cooking food in kitchen whereas his brother Raj Kumar was dining. These witnesses could prove material for complainant for proving allegations against accused but despite availing sufficient effective opportunity complainant failed to examine them for the reason best known to him. On account of non examination of these witnesses certainly indelible dent created in complainant story. Beside it complainant also failed to examine doctor who conducted medical examination of PW1 and PW2. On account of his non-examination injuries could not be medically corroborated which also created serious dent in the complainant story.”

[5] After hearing learned counsel for the applicant-appellants, we do not find any merit in the application seeking leave to appeal. The complaint is apparently a counter-blast to the criminal case in which the applicant-appellants were found guilty and were convicted. The delay in filing the complaint is fatal and so are the discrepancies in the statements of the witnesses examined by the applicant-appellants. The fact that the doctor who conducted medical examinations of PW1 and PW2 has not been produced as a witness completely demolishes the case of applicant-appellants as the alleged injury suffered by them could not be corroborated by any medical evidence.

[6] For the reasons aforestated, we do not find any merit in the

**CRM-21524-25-2015 in/and
CRM-A-1141-MA-2015 (O&M)**

-4-

application seeking leave to appeal.

[7] Dismissed.

CRM-21524-2015

As the main case has been dismissed on merit, there is no need to pass separate order in the application for placing on record, which has become infructuous.

**(SURYA KANT)
JUDGE**

October 23, 2017
meenuss

**(SUDHIR MITTAL)
JUDGE**

- | | | |
|----|-----------------------------|--------|
| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |