

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

CRM No.A-266-MA of 2016 (O&M)

Date of decision: March 23, 2017

Rajinder Kumar Dawar

...Applicant

Versus

Gaurav Sethi and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vipul Aggarwal, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Rajinder Kumar Dawar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Gaurav Sethi and Kapil Sethi, challenging the judgment dated 05.12.2015 passed by learned Judicial Magistrate Ist Class, Assandh, 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 further stated that impugned judgment has been recorded on the basis of untenable, fanciful and findings, which are contrary to law and evidence on record and failure of justice. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Rajender Kumar Dawar

filed a complaint against accused Smt.Kanchan, Gaurav Sethi and Kapil

Sethi under Sections 323, 386, 406, 452, 506, 148 and 149 IPC. The averments of the complaint as noted down in the judgment passed by learned JMJC, Assandh, are as under:-

“2. It is alleged in the complaint that the marriage of complainant and accused no.1 was solemnized on 10.5.1997 according to Hindu rites and ceremonies. After marriage, they started living together and two children were born out of this wedlock. The marriage was a simple one and no dowry article was given. But accused no.1 is hight heated woman and in collusion with other accused, she started creating nuisance against complainant. To settle the dispute, accused no.1 had convened two panchayat on 2.12.2001 and 26.5.2002. On 20.4.2008, complainant was sitting in shop. There he received an information that accused no. 2 and 3 along with some bad elements came to Assandh to kill him. On this, he ran away from his shop and when accused persons did not find him in his shop then they made criminal trespass into house of brother of complainant. Accused persons manhandled them. On receiving this information, the complainant along with some respectable persons went to the house of his brother. A panchayat was convened wherein it was decided that accused no.1 would be taken back to her matrimonial home for some time and the decision was reduced into writing. But accused no.1 and 2 torn it and threatened that accused no.1 would reside in Assandh and torture him. After this incident, accused no.1 filed a false criminal complaint under section 12 of D.V. Act on 28.5.2008 which was decided in favour of present complainant. Accused no.1 continously harassed him and misbehaved with him. On 22.7.2010 at about 7.00 P.M., complainant was sitting at his shop. Meanwhile, accused no.1 came there and started abusing him and threatened to face dire consequences. On 1.8.2010, complainant was cleaning his shop at about 1.00 P.M. Suddenly, accused no.2 and 3 came at his shop on motor-cycle. They forcibly entered into his shop and taunted him. They started pelting the shoes and chappals from rack in the shop and when complainant asked them not to do so, then they gave fist blows and slaps to complainant. On raising alarm by him, Jeet Ram son of Jagat Ram and Surender Kumar son of Munshi Ram came at his shop and saved him from clutches of accused. Thereafter, both accused left the shop and threatened him. When complainant reached his house then he found that accused no.2 and 3 were already present there. Accused no.1 gave gold weighing 6 tolas to them and despite protest of complainant they took the same. Constrained by these circumstances, complainant has filed the present complaint. ”

Finding prima facie case, only accused No.2 and 3 namely Gaurav Sethi and Kapil Sethi were summoned to face trial and they were charge-sheeted under Sections 323 and 452 IPC, to which they pleaded not guilty and claimed trial.

In defence, accused examined DW-1 Rohit Dhiman and DW-2 Ashish Kumar.

Learned JMIC, Assandh, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondents vide impugned judgment dated 05.12.2015.

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.

From the perusal of the record, I find that complainant filed a complaint against his wife Smt.Kanchan Sethi, Gaurav Sethi and Kapil Sethi, who are real brothers of Kanchan Sethi and real brother-in-law of the complainant. As per the complainant, the occurrence took place on 01.08.2010 but the complaint was filed on 16.11.2010. There is delay of 3½

delay. Even the matter was not reported to the police by the complainant. At the time of arguments, learned counsel for the complainant argued that the neighbours have informed the police but the police did not take action. No reason or ground has been given as to why the complainant himself did not approach the police. There is no documentary evidence to show that the matter was reported to the police.

Furthermore, as per the allegations in the complaint, it is clear that relations between the complainant and his wife Smt.Kanchan Sethi were strained. As per the allegations, accused No.2 and 3 namely Gaurav Sethi and Kapil Sethi, forcibly entered in the shop, taunted him and they gave fist blows and slaps to the complainant. There is no medical evidence to corroborate the injury, if any, received by the complainant.

Learned trial Court after discussing the evidence, acquitted the accused. Learned Court below held that to prove his version, the complainant examined as many as five witnesses. The perusal of testimonies of CW-4 and CW-5 shows that they have not uttered even a single word regarding alleged incident on 01.08.2010. Their testimonies can only be used for establishing the fact that earlier also several such incidents took place between complainant and accused. The perusal of the testimonies of witnesses CW-1 Surender, CW-2 Jeet and CW-3 Rajinder clearly shows that they have deposed on the line of complaint. CW-1 and CW-2 have submitted that accused persons have given fist blows and slaps to complainant whereas CW-3 complainant Rajinder has stated that accused Gaurav caught hold his neck and accused Kapil gave him kick blows. This version of complainant is a material improvement.

have been leveled by complainant against the accused, without attributing any specific role and injuries to any of them. The Court below also discussed the defence evidence qua alibi, which was produced by the accused to show that they were on duty in the bank etc. The Court believed the record of the bank.

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 05.12.2015 passed by learned Judicial Magistrate Ist Class, Assandh, 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.

March 23, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No