

CRM-A-1123-MA-2014 (O & M)

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

CRM-A-1123-MA-2014 (O & M)
Date of Decision: 09.02.2017

Kulwant Singh

... Applicant

Versus

Sukhpal Singh alias Guji and others

... Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. J.K.Singla, Advocate,
for the applicant.

INDERJIT SINGH, J.

CRM-21579-2014

This is an application seeking condonation of delay of 09 days in filing the application for leave to appeal.

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 09 days in filing the application seeking leave to appeal, is condoned.

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Applicant-Kulwant Singh has filed this application under Section 378 (4) of the Code of Criminal Procedure, 1973 seeking permission for leave to appeal against respondents- Sukhpal Singh alias Guji, Gurtej Singh alias Bhola Singh, Pargat Singh @ Bhola, Ajmer

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Singh and Harphool Singh challenging the impugned judgment dated 26.03.2014 passed by learned Judicial Magistrate Ist Class, Phul, in criminal complaint No.05 of 06.03.2009, titled as 'Kulwant Singh vs. Sukhpal Singh @ Guji and others' filed under Sections 458, 452, 307, 427, 323, 341, 199, 120-B, 506, 148 and 149 of the Indian Penal Code, vide which the respondents-accused 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 the applicant filed the criminal complaint against the aforesaid respondents-accused stating that on 30.08.2006, at about 8.00/8.30 p.m, all the accused while armed with weapons came in his house and caused injuries to him, therefore, they committed the offences under the aforesaid sections. It is also stated that the impugned judgment passed by learned Judicial Magistrate Ist Class, Phul, acquitting the respondents, is contrary to the facts and suffers from illegality and irregularity and thus the same deserves to be set aside. It is, therefore, prayed that leave to appeal be granted.

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

From the record, I find that applicant-complainant, Kulwant Singh filed a complaint under Sections 458, 452, 307, 427, 323, 341, 199, 120-B, 506, 148 and 149 IPC against the aforesaid respondents-accused. The brief facts of the case, as noted down in the judgment passed by learned Judicial Magistrate Ist Class, Phul, are as under:

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“2. Brief facts of the present complaint are that the complainant is an Ex-Army personnel and is residing at village Mandi Kalan alongwith his family. They are six brothers namely Jaswant Singh, Kulwant Singh, Sukhpal Singh, Balbir Singh, Gurmail Singh and Raj Singh and one sister namely Rani Kaur. All are married. His brother Sukhpal Singh is living separately and remaining brothers are living jointly with their parents. Accused Ajmer Singh and Harphool Singh are the uncle of the complainant and litigation is pending between them regarding some land and accused nourishes a grudge against him. On 30.08.2006, at about 8/8.30 P.M, the complainant was present in his house and lights of the house was on. He was sitting on a cot in the court yard. Then accused Sukhpal Singh armed with Gandhali, Gurtej Singh armed with Dang, Pargat Singh armed with Dang alongwith Ajmer Singh and Harphool Singh came on a Gypsy bearing registration No.CH-01G-0705. Accused Harphool Singh and Ajmer Singh raised lalkara that the complainant is alone in the house and he should not be spared and be taught a lesson for not giving the land to Sukhpal Singh. Then accused Ajmer Singh and Harphool Singh encircled the complainant. Accused Sukhpal Singh with intention to kill him gave Gandhali blow which hit on head of the complainant from sharp side. Accused Gurtej Singh @ Bhola gave a dang blow which it on the upper side of his left hand. Accused Pargat Singh caught hold of him and throw him on the ground. When the complainant was lying on the ground, accused Sukhpal Singh and Pargat Singh gave kick blows in his abdomen. He raised alarm 'Marta Marta’.”

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Then his brother Jaswant Singh who was irrigating the paddy crop near the house, came there and then all the accused fled away from the spot on Gypsy alongwith their respective weapons while abusing and threatening the complainant. The accused also damaged the domestic articles i.e. TV refrigerator etc. lying in the house of the complainant with their weapons. When the brother of complainant namely Jaswant Singh was about to take him to the hospital, accused prevented him from doing so. As such the complainant alongwith his brother remaining in the house during night and on the next morning informed Gurdev Singh Panch and then his brother Jaswant Singh took him to PHC Balianwali where he was medically examined by the doctor. Thereafter, they went to the police station Balianwali and narrated the occurrence to ASI Jai Singh, who after making inquiry from the complainant and Jaswant Singh got their signatures on blank papers and they were sent back with an assurance that he will take proper action against the accused. Instead of taking action against the accused, a false case bearing FIR No.42 dated 31.08.2006 was registered against the complainant. The complainant again approached police station Balianwali and DSP Phul for taking action against the accused, but no action was taken against the accused. Hence, the present complaint.”

Learned Judicial Magistrate Ist Class, Phul, after appreciating the evidence, acquitted the respondents-accused vide impugned judgment dated 26.03.2014.

Aggrieved from the above said judgment, the present

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application seeking leave to appeal has been filed.

I have heard learned counsel for the applicant and have gone through the record especially the impugned judgment passed by the learned Judicial Magistrate Ist Class, Phul.

From the impugned judgment, I find that the learned Magistrate has acquitted the accused after giving sound reasoning on the basis of evidence and law. In no way, the findings can be held as perverse or against the evidence. At the time of arguments, nothing has been pointed out as to how the findings given by learned trial Court are perverse or against the evidence. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the learned Court below. Nothing has been pointed out as to what illegality has been committed by the court below while acquitting the accused.

As per CW 2- complainant, litigation between the parties was already pending. He stated that accused-Sukhpal Singh armed with *gandhali* and with intention to kill him gave a *gandhali* blow which hit on his head from sharp side. However, as per CW 1 Dr. Amrik Singh, the weapon used for causing injury was blunt. As per the doctor, there was no injury caused with sharp edged weapon. Therefore, the oral statement of the complainant describing the injury with sharp edged weapon is not corroborated with the medical evidence. Furthermore, this complaint has been filed after a delay of 03 years and there is no cogent explanation as to why this complaint has been filed after such a long

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period. Furthermore, at the time of arguments, it is admitted by learned counsel for the applicant that qua the same occurrence, FIR has been registered against the applicant-complainant in which he has been convicted and released on probation. Therefore, the present case looks to be a counter-blast to the FIR case. Otherwise also, reasonable doubt exists on the ground as to why the complainant remained silent for about 03 years and did not file any complaint for such a long period.

From the above discussion, I find that findings given by the trial Court are correct, as per evidence and law and, therefore, the same do not require any interference.

Therefore, finding no merit in the present application under Section 378 (4) Cr.P.C., the same is dismissed.

09.02.2017
parveen kumar

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No