

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

CRM No.A-1246-MA of 2015 (O&M)

Date of decision: February 16, 2017

Balwinder Singh alias Baljinder Singh

...Applicant

Versus

Harjinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sartaj S. Gill, Advocate
for the applicant.

Mr.Rajinder Sharma, Advocate
for respondent No.1.

Mr.S.S.Dhaliwal, Advocate for
Ms.Poonam Josan, Advocate
for respondent No.2.

None for respondents No.3 to 13.

INDERJIT SINGH, J.

Applicant-Balwinder Singh alias Baljinder Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Harjinder Singh and other respondents, challenging the impugned judgment dated 31.03.2015 passed by learned Sub Divisional Judicial Magistrate, Baba Bakala Sahib, vide which 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 the impugned judgment is wholly unsustainable in the eyes of law and has resulted in grave miscarriage of justice. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Balwinder Singh alias Baljinder Singh filed a complaint against Harjinder Singh and 12 other accused under Sections 452, 427, 506, 166, 148, 149 and 120-B IPC. The averments of the complaint as noted down in the judgment passed by learned SDJM, Baba Bakala Sahib, are as under:-

“1. The present complaint has been filed by complainant Balwinder Singh against the accused persons on the allegations that complainant is permanent resident of Village Ramdiwali Musalmana, Tehsil Baba Bakala Sahib, Distt. Amritsar. He has landed property situated in the village bearing khasra nos.223/4 (7-14), 223/3 (1-0), khewat/khatauni No.437/744, 52/72 as per jamabandi for the year 1997-98. The said property is joint alongwith other members of family. The complainant had constructed a room thereon measuring 15 feet long 12 feet in width with three T.Gardens. The accused no.3, 4 and 5 wanted to carve a passage through the landed property of complainant by demolishing the said room. The complainant filed a civil suit in the Court at Baba Bakala Sahib claiming the relief of permanent injunction restraining the defendants from forcibly and illegally making passage (lane) through the land of complainant, in which, the civil Court passed status-quo order regarding the property. The said case was pending for defendants/respondents evidence for 14.9.2004. The respondents no.3 to 13 by using their political influence, got registered a false criminal case FIR No.20/2003 u/s.341/283,148,149 IPC against complainant, his brother Gurmit Singh, Lakhwinder Singh, father Piara Singh and other 18 persons of village for showing the passage as public street of village and the respondents No.3 13 prepared a forged and fabricated site plan of village Ramdiwali Musalmana showing the passage as public street of village. The accused no.3, 4 and 5 also filed a written statement accompanied with site plan of village showing a wrong passage. The accused Kulbir Singh filed a petition No.51350-M of 2003 before the Hon'ble High Court for issuance of directions to respondents to remove obstruction from the alleged passage, lane and under the garb of order dated 6.11.2003 passed by Hon'ble High Court, the police authorities started harassing the complainant, whereas no directions was issued by the Hon'ble High Court to the respondents no.1 and 2 to demolish construction of

complainant, but the respondent no.1 issued notice to complainant and his brothers vide No.835-37 dated 8.7.2004 for demolition of the construction within seven days. Thereafter, respondent no.1 issued notice to village Sarpanch vide office order No.898 dt.20.7.2004 to remain present at the site when respondent no.1 would demolish the construction on 21.7.2004 at 10.00 a.m. On 21.7.2004 or on 23.7.2004 accused no.1 accompanied with accused no.2 and other accused no.3 to 13 alongwith police force came to the spot at about 2.30 p.m and ordered to demolish the room forcibly with tractor-bulldozer. The complainant showed them copy of the status quo order passed by the Civil Court but the respondents paid no heed to the same and demolished the room with a common wall with other residential rooms of complainant, causing a loss of more than Rs.1 Lakh to the complainant. The articles lying in the demolished room i.e three wheat storage drum, three oil drums, a trolley, costing more than Rs.90,000/- were damaged. While leaving the spot, at the instance of respondents no.1 and 2, the other respondents carried with them 2 T.Gardens, 5000 bricks, two drums filled with 24 quintiles of wheat and three drums of diesel oil of 200 litres each. However, the complainant and his family members objected to aforesaid illegal act of respondents, but they gave beatings to the complainant and his family members including females, in the presence of village Sarpanch Sawinder Singh and member panchayat Dalbir Singh, major Singh etc. The complainant approached the concerned police station, but no action was taken against the accused persons, hence, the complainant filed the present complaint.”

Learned SDJM, Baba Bakala Sahib, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondents.

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

Notice of motion was issued. Learned counsel for respondents No.1 and 2 appeared and contested the application. Earlier, learned counsel for respondents No.3 to 13 was appearing but today, none appeared on behalf of respondents No.3 to 13.

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

The perusal of the impugned judgment shows that the findings have been given by learned Magistrate while appreciating the evidence in right perspective. In no way, the findings can be held as 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 Court below. Nothing has been pointed out as to how the findings are illegal or against the law.

The accused were charged under Sections 452, 427, 148 and 149 IPC. The complainant examined himself as CW-1, CW-2 Major Singh and CW-3 Vijay Kumar. At the close of the complainant evidence, the accused were examined under Section 313 Cr.PC. and they denied the correctness of the evidence and stated that they have been falsely implicated in this case. In defence, accused examined DW-1 Palwinder Singh, DW-2 Davinder Singh, Halqa Parwari and tendered into evidence certified copy of sale deeds and mortgage deeds Ex.D23 to Ex.D28 and the endorsements of above-said sale/mortgage deeds Ex.D23/1 to Ex.28/1 etc.

Learned trial Court, after hearing the parties held that there is only one material point of determination in the present case i.e. whether complainant has succeeded in proving beyond doubt that all accused while exceeding their powers and jurisdiction while forming an unlawful assembly while armed with deadly equipments like bulldozers, tractors etc. with a common object of demolishing said construction while defying order dated 9.9.2002 of status quo regarding existing position passed by learned Addl. Civil Judge, (Senior Division), Baba Bakala and further while misinterpreting the order of High Court dated 6-11-2003 passed in Crl. Misc.

question definitely lies in negative, as in this case accused no.1 and 2 in discharge of their official duty got removed obstructions in the shape of constructions over public street as per the directions of High Court vide order dated dated 6-11-2003 passed in CrI. Misc. No.51350-M of 2003, operative part of which is reproduced:-

“This petition filed under Section 482 Cr.P.C prays for issuance of directions to respondents no.2 to 5 i.e. SSP, Majitha etc. to look into the grievances of the petitioner in his representation Annexure P-4. It is claimed that the Block Development and Panchayats Officer, Bharmika, Block Baba Bakala, District Amritsar, has recommended the police help for removing obstructions which are not being removed on account of political pressure of private respondents 6 to 20. It is also claimed that the obstructions have been caused on the public street which are required to be removed.

Without going into the merits of the controversy and after perusing the averments made in the petition and hearing the learned counsel for the petitioner, the SSP, Majitha, is directed to examine the grievances of the petitioner in his representation Annexure P-4. If after examination of the grievances of the petitioner, he finds that any cognizable offence has been committed, then, without being influenced by any pressure, he should proceed against the persons who have violated any of the penal laws. He should also issue necessary directions to respondents no.3, 4 and 5 if he considers appropriate. The needful shall be done within a period of 4 weeks from the date a copy of this order is received by the SSP, Majitha.

This petition is disposed off. Copy of the order be given dasti.”

The perusal of the record shows that construction has been demolished by accused No.1 and 2 on the basis of the orders and directions of the District Magistrate while performing official duty. No sanction under Section 197 Cr.P.C. has been obtained before filing this complaint against accused No.1 and 2.

In view of the proceedings, order passed by this Court as stated above and in view of the applications etc. given for removal of

encroachments, the encroachment has been removed as per law by complying the order of District Magistrate, therefore, SSP and other higher officers are not accused in this case. Learned Magistrate has correctly acquitted the accused in this case.

In view of the above discussion, I find that the impugned judgment dated 31.03.2015 passed by learned SDJM, Baba Bakala Sahib, 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.

February 16, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No