

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

CRM No.A-1339-MA of 2015 (O&M)

Date of decision: March 07, 2017

Babu Ram

...Applicant

Versus

Kartar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.P.Sharma, Advocate
for the applicant.

Mr.Dinesh Maurya, Advocate for
Mr.G.S.Sandhu, Advocate
for respondents No.1 and 2.

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

Applicant-Babu Ram has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Kartar Singh and other respondents, challenging the judgment dated 09.04.2015 passed by learned Addl. Sessions Judge, Karnal, 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 questions of law and facts are involved in the accompanying appeal, which are to be considered and decided by this

Court. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Babu Ram filed a complaint against accused Kartar Singh, Raghubir Singh and Harpal Singh under Sections 379, 452, 506 IPC and Sections 3 (x) (xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [SC/ST Act]. The averments of the complaint as noted down in the judgment passed by learned Addl. Sessions Judge, Karnal, are as under:-

“2. In brief, the case of the complainant is that he is owner in possession of a Gair Mumkin Baara measuring 0 Kanal 12 Marlas comprised in Khewat No.573/556, Khatoni No. 850, Rect. No.47, Khasra No.2/3/2(0-12) situated in village Sandhir, Tehsil Nilokheri, District Karnal, vide Jamabandi for the year 2002-2003. The Baara in question was allotted to his fore-fathers at the time of consolidation being Balmiki Harijan and since then, his fore-fathers were owners in possession of the same and after the death of his father, he has become owner in possession of the Baara in question. He is thus in continuous and peaceful possession of the same without any interruption from any quarter. The Baara in question was an old kacha house which was in a dilapidated condition and the said kacha house had fallen down. Thereafter, he started construction of a pucca house over the Baara in question. There were 6000 bricks lying at the spot and two Batoras were also existing there belonging to him. The foundations of the Baara in question were also dug and filled in. On 18.6.2006 at about 11.30 pm (night), all the accused alongwith 20 other persons armed with deadly weapons with a tractor trolley came at the spot and started digging out the foundations of the Baara in question. He, his wife Smt. Kitabo Devi and his son Manjit tried to stop the accused persons from doing so and asked them not to take law into their own hands and not to dug out the foundations of the Baara in question forcibly and illegally but they got enraged and started giving filthy abuses to them. They also gave several fists and slap blows to them and also threatened that in case, they tried to interfere in the matter, they will put them to death and would run over them under the tractor-trolley. Thereafter, the accused used defamatory language against them by saying that “Haramzade Sale Chuhre, Kutte Hat Ja, Nahin To Jaan Se Mardenge”. The accused also threatened them that they will take forcible and illegal possession of the Baara in question from the complainant and out of fear, he, his wife and son ran away from the spot in order to save them. Accused took 3000 bricks

of the complainant and also removed two Batoras from the spot. Previously, accused persons also tried to dispossess him from the Baara in question forcibly and illegally and due to this reason, he filed a civil suit for permanent injunction against them which is now pending and the court has ordered to maintain status-quo regarding the Baara in question vide order dated 27.4.2006 and 16.5.2006. Complainant has also filed a complaint to the Superintendent of Police, Karnal and SHO, Police Station Butana on 19.6.2006 and thereafter, he filed a complaint on 22.6.2006 to the Director General of Police, Haryana, Chandigarh, through a registered AD post but no action was taken. Hence, the present complaint.”

The charges were framed by the trial Court under Sections 452, 379 read with Section 34 IPC and Section 3(1) (x) of the SC/ST Act, to which accused pleaded not guilty and claimed trial.

The complainant examined himself as PW-1, his son Manjeet Kumar as PW-2 and his wife Smt.Kitabo Devi as PW-3.

In defence, accused examined Shri Vijay Bharara, the then Dy.S.P.Headquarter, Karnal as DW-1, who deposed that on 21.07.2006, a complaint made by Kitabo Devi to the Superintendent of Police, was marked to him, for inquiry and he had inquired into the matter and after recording statements of both the parties and joint statements of Ram Singh and others, he prepared his report, the copy of which is Ex.D2 vide which the allegations of Kitabo Devi complainant were found to be false.

Learned Addl. Sessions Judge, Karnal, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondents vide impugned judgment dated 09.04.2015.

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

application.

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

At the time of arguments, nothing has been argued 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 given by the Court below are perverse or against the evidence or law. The evidence has been appreciated in right perspective.

The perusal of the record shows that it is nowhere mentioned in the complaint qua the caste of the accused. There is nothing on the record to show that these words have been attributed intentionally to lower the reputation and respect of the complainant and there is also nothing that these words have been used in the public view. As per the complainant's version, the occurrence took place on 18.06.2006 at about 11.30 P.M. in the presence of family members of the complainant. Therefore, the accused have been rightly acquitted under Section 3 (1) (x) of the SC/ST Act.

As regarding the offence under Section 452 IPC, I find that the ownership and exclusive possession has not been proved by the complainant. Rather, the defence of the accused is that complainant party filed a civil suit against them regarding a plot, which was contested by them and the same was decided in their favour by the learned lower court and during the pendency of the said civil suit, the complainant party moved a false complaint against them to the Director General of Police which was marked to Dy.S.P.Headquarter, Karnal who conducted inquiry in the matter and found the said complaint to be false. Furthermore, learned Court below

found that no bill or receipt regarding the purchase of said bricks, has been

placed on record to prove the ownership.

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 09.04.2015 passed by learned Addl. Sessions Judge, Karnal, 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 07, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No