

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.A-1399-MA of 2014

.....

Date of decision:14.3.2017

Palwinder Singh

...Applicant

v.

Gurmeet Singh and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Ajaivir Singh, Advocate for the applicant.

.....

Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Gurmeet Singh and others-respondents seeking grant of leave to file appeal against the impugned judgment dated 23.5.2014 passed by learned Judicial Magistrate Ist Class, Mohali, vide which the complaint filed under Sections 379, 380, 427 and 506 IPC had been dismissed and the accused have been acquitted after extending the benefit of doubt.

It is mainly stated in the application that the applicant is filing the accompanying appeal which is likely to be accepted by this Court and the grounds of the appeal may be read as part and parcel of this application. It has been stated that there are sufficient grounds for grant of leave to appeal in the present case. In the acquittal of the accused/respondents,

miscarriage of justice has been done. It has been prayed that this application be allowed and the applicant be permitted to file the appeal.

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

From the record, I find that Palwinder Singh-complainant filed complaint under Sections 379, 380, 427 and 506 IPC against Gurmeet Singh, Paramjit Singh, Bhupinder Singh and Bhag Singh. The brief facts of the case as noted down by the learned Judicial Magistrate Ist Class, Mohali, in the judgment dated 23.5.2014 are as under:-

“Brief facts of the present complaint as per the version of the complainant are that the complainant was one of petitioners in Civil Writ Petition No.5512 of 2001, which was filed against the acquisition of land of complainant and others by PUDA. In this writ petition, dispossession of complainant and others was stayed by the Hon'ble Punjab Haryana High Court. The land involved in above writ petition also included No.70/12 (8-0) alongwith tubewell installed therein, which was purchased by complainant and other co-sharer through a sale deed dated 29.04.1994. The tubewell was operated with diesel engine by the complainant and his brother for irrigating their land. There was a 30 feet deep well, in which pipes of bore was installed. The total length of pipes was about 75 feet and there was other accessory attached to the bore. Complainant further submitted that in spite of stay order granted by the Hon'ble High Court,

the Collector, PUDA had allotted the land of complainant and his brother to Derra Radhaswami Satsang, Beas Center, Mohali. Few days earlier to 29.07.2006 in above Derra 200 persons were collected and they wanted to take possession forcibly of the land of complainant and others. The complainant reached to the spot and informed them regarding the stay order and he also told them, if they dispossessed him forcibly, then, he will initiate legal proceedings against them. People left the spot. Then again on 29.07.2006, 200 or more persons under the leadership of accused no.1 entered and occupied the land of complainant including Khasra No.71/12, where tubewell was existing. These persons were sitting in the field and challenging that anybody who dares to come near them would be done to death. Complainant did not enter into the field. Jasmer Singh son of Nasib Singh, Sant Singh S/o Prem Singh has also come their land, which is near to the land of complainant. Accused no.1 alongwith other accused destroyed the well by filling it with soil and took the iron pipes alongwith diesel engine from the land of the complainant. Complainant further submitted that the accused person had stolen diesel engine of 10 H.P., alongwith other accessories i.e. pump, belt, delivery pipe, belonging to the complainant. Complainant alongwith his mother moved an application before SSP, Mohali, on 29.08.2006 and brother of the complainant also moved

application before the SHO, Sohana in continuation of above application, but no action had been taken against the accused persons. Hence, the present complaint has been filed against the accused persons.”

The learned trial Court after appreciating the evidence acquitted the accused. Aggrieved from this judgment, the present appeal along with application seeking leave to file appeal has been filed.

I have gone through the judgment passed by the Court below. From the record, I find that first of all a perusal of the complaint shows that name of accused No.2 Paramjit Singh, accused No.3 Bhupinder Singh and accused No.4 Bhag Singh had not been mentioned in the body of complaint. Secondly, as per the version of the complainant there was a 30 feet deep well in the disputed land. It is the case of the complainant that PUDA had allotted the land of complainant and his brother to Dera Radha Swami Satsang, Beas Centre, Mohali and a few days earlier to 29.7.2006 in the above Derra 200 persons were collected and they wanted to take possession forcibly of the land of the complainant and others. The complainant reached the spot and informed regarding the stay order passed by the Court and the people left the spot.

As per CW-2 Sant Singh, examined by the complainant, possession of Khasra No.70 Mustil 12 had been given by PUDA authorities to Radha Swami people on 28.7.2006 and also given the possession of Khasra No.70 Mustil 11 to them. After the possession was delivered as per CW-2 to the Radha Swami Dera, then filling of the well of the tube-well etc.

does not constitute any offence and, in no way, any offences under Sections 379 and 380 IPC can be held as committed. The learned trial Court has discussed the contradictions also in the statements of the PWs. The names of accused No.2 to 4 by the PWs in the evidence will be treated as material improvements. There were no names in the body of the complaint of accused No.2 to 4 but their names are mentioned in the head note of the complaint. Further, the Court discussed the statement of CW-1 complainant, who admitted in cross-examination that the eye witnesses reached at the spot of occurrence. The tractors started running at about 5.45/6.00 a.m. The complainant stated that the alleged occurrence took place at about 6.00 a.m. on 26.7.2006 which date has been wrongly mentioned. CW-2 also stated in cross-examination that he did not see Palwinder Singh and his brother on the spot. Further, the tube-well was not uprooted in his presence and in fact the activities were already done before his reaching. Keeping in view this cross-examination, much reliance cannot be placed on the statement of CW-2 Sant Singh. Furthermore, CW-3 Jasmer Singh stated that on 29.7.2006, he went to his fields at about 4.00 a.m. and saw that tractors were working in the land in dispute and 200-250 persons out of which he identified Paramjit Singh, Bhag Singh, Gurmeet Singh, who loaded engine in tractor. He stated that Palwinder Singh came at the spot at about 6.15 a.m. This witness further stated that there was dark at 4.00 a.m. He had seen removing the engine in the dark without any torch. This statement also cannot be believed. When there were about 200 persons, a person cannot see in dark, who are removing the engine etc.

A perusal of the record specially the judgment passed by the learned trial Court shows that the findings have been given as per evidence and law and, in no way, the findings can be held as perverse. Nothing has been pointed out as to which material evidence has been misread by the Court below and nothing has been pointed out as to which material evidence has not been considered by the Court below.

The Court has discussed the evidence on record in right perspective. A reasonable doubt exists in the complainant's version. Therefore, the accused have been rightly acquitted in this case. The findings are correct as per evidence and law and do not require any interference from this Court.

In view of the above discussion, I do not find any ground to grant leave to file appeal. Therefore, finding no merit in the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to appeal, the same is dismissed.

March 14, 2017.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No