

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

CRM-A-605-MA of 2016.

Decided on:-December 11, 2017.

Rajo.

.....Applicant.

Versus

Budh Ram and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Harish Nain, Advocate
for the applicant.

HARI PAL VERMA, J.

The applicant has filed the present application under Section 378(4) of the Code of Criminal Procedure for grant of leave to appeal against the judgment dated 25.02.2016 passed by learned Judicial Magistrate 1st Class, Narwana, District Jind, whereby the respondents No.1 to 4-accused were acquitted of the charges framed against them in a criminal complaint filed under Sections 452, 323, 324, 506, 148 and 149 IPC by the complainant (applicant herein).

Briefly stated, it is the case of the applicant-complainant that on on 20.08.2012 at about 08.00 A.M., when she was working inside her house, accused persons came to her house. Respondents No.1 to 4-accused were armed with Dandas, whereas the remaining accused, namely, Raj Kumar, Somvir and Kamla were empty handed. Accused Kamla gave a Lalkara to teach the complainant a lesson for raising an objection against taking possession of land belonging to Budhi Mata. Thereafter, respondent No.1-

accused gave a Danda blow on left ear of the complainant as a result of which one pinna was separated. Respondent No.2-accused gave a Danda blow at the ring finger of left hand of complainant, whereas respondent No.3-accused gave a Danda blow on the middle finger of her left hand. Respondent No.4-accused also gave a Danda blow on her left leg. Accused Kamla gave slap and fist blows to the complainant. Hearing her cries, her son Bhim Singh came from the second room and tried to save her from clutches of the accused. However, accused Raj Kumar gave a fist blow on the left eye of Bhim Singh, whereas accused Somvir gave a fist blow on his chest. Apart from that, the accused also inflicted silent injuries to the complainant and her son Bhim Singh. The accused persons also abused them and threatened them of dire consequences. In the meantime, Bhan came to the spot and rescued them from the clutches of accused persons. Thereafter, Hari Das shifted the complainant and her son to the civil hospital. The matter was reported to the police, but the police challaned the complainant and her son as well as respondents No.1 and 2, namely, Budh Ram and Sonu as well as Kamla under Sections 107 and 151 Cr.P.C. As the police did not register case for the offences mentioned in the complaint, hence, the complaint.

After recording the preliminary evidence, learned trial Court vide order dated 04.07.2014, had summoned the respondents No.1 to 4-accused to face the trial under Sections 323, 452 and 506 read with Section 34 IPC. Thereafter, pre-charge evidence was recorded and finding a prima facie case, learned trial Court, vide order dated 02.12.2015, charge-sheeted respondents No.1 to 4-accused for offence under Section 323 read with Section 34 IPC, to which they did not plead guilty and claimed trial.

After considering the evidence produced on record and hearing arguments of both the sides, learned trial Court vide judgment dated 25.02.2016 acquitted the respondents No.1 to 4-accused of the charge framed against them.

Aggrieved against the aforesaid judgment, the applicant-complainant has filed the present application under Section 378(4) Cr.P.C. for grant of leave to appeal.

Learned counsel for the applicant-complainant has argued that learned trial Court has erred in law while passing the impugned judgment in a hush-up manner and has not appreciated the oral as well as documentary evidence produced by the applicant-complainant. The ocular version of the applicant-complainant was clear and specific with regard to the injuries suffered by her and the same were fully supported by the medical evidence. But still, the trial Court has acquitted the respondents No.1 to 4 merely on the basis of surmises and conjectures.

He has further contended that the trial Court has erroneously recorded a finding that no such occurrence took place on 20.08.2012, whereas the parties were challaned under Sections 107 and 151 Cr.PC regarding that very occurrence. He has prayed for setting aside of the impugned judgment of acquittal and to convict and sentence the respondents No.1 to 4-accused for the offences committed, as detailed in the complaint.

I have heard learned counsel for the applicant-complainant.

Perusal of the impugned judgment dated 25.02.2016 passed by learned Magistrate reveals that a civil suit is pending between the parties and the motive behind the occurrence was that Budhi Ram etc. were trying to

encroach upon the land of Budhi Mata. The complainant party raised an objection to such encroachment. In the challan under Section 107 and 151 Cr.PC, the accused have been acquitted and before the complainant reached the police, Budh Ram had already filed an application against the complainant party apprehending physical violence.

So far as accused No.5 to 7 are concerned, there was no good evidence available against them and, therefore, they were not even summoned by the trial Court. Non-summoning of these accused was never challenged by the applicant-complainant. As such, when there was no evidence of presence of more than 5 persons available on record, the accused No.1 to 4 could not be summoned for the alleged commission of offence punishable under Sections 148 and 149 IPC.

The impugned judgment further reveals that in pre-charge evidence, CW2 Bhim Singh asserted that his mother was sitting outside her house where the occurrence took place and, therefore, the accused were not charge-sheeted for commission of offence under Section 452 IPC.

Thus, the only question before the trial Court was that whether respondents No.1 to 4-accused in furtherance of their common intention inflicted simple injuries on the complainant party or not. Learned trial Court did not find the version of applicant-complainant Rajo as CW1, Bhim Singh as CW2 and CW4 Bhan Singh to be truthful as there were many contradictions in their statements. Moreover, no independent witness was examined by the applicant-complainant though many persons of the village were present at the time of alleged occurrence. As per the applicant-complainant, there was bleeding for injury No.1, but Dr. Suchi Goyal

deposing as CW3 has not reported about bleeding on the person of applicant qua injury No.1. Similarly, CW3 has also admitted that there was no other injury or injury mark on the ear or the corresponding area on the person of applicant-complainant Rajo, strengthening the view that this injury might have been self inflicted. Thus, learned trial Court has observed that a serious doubt is created about the case of applicant-complainant and the accused are entitled to the benefit of doubt and accordingly, acquitted the respondents No.1 to 4-accused of the charge framed against them.

The applicant-complainant has failed to show any misreading of evidence by learned trial Court and has not been able to point out any legal error in the judgment under challenge which may warrant interference by this Court. When there is no evidence to connect the respondents-accused with the alleged crime available on record, no case is made out for interference in the impugned judgment of acquittal dated 25.02.2016 passed by learned Judicial Magistrate 1st Class, Narwana.

Accordingly, the present application, being devoid of any merit, is dismissed. Leave to appeal is declined.

December 11, 2017

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No