

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1529-MA of 2015

.....

Date of decision:10.3.2017

Harvinder Singh

...Applicant

v.

Darshan Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Arun Singla, Advocate for the applicant.

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Inderjit Singh, J.

Applicant-Harvinder Singh has filed this criminal miscellaneous application under Section 378(4) Cr.P.C against Darshan Singh-respondent seeking grant of leave to file appeal against the impugned judgment of discharge dated 14.7.2015 passed by learned Chief judicial Magistrate, Hoshiarpur, vide which the accused/respondent has been acquitted in the complaint and the complaint was ordered to be dismissed.

It has been mainly submitted in the application that the applicant is filing the accompanying criminal appeal against the judgment of acquittal which is likely to succeed as per grounds mentioned therein. It has been stated that the impugned judgment of the learned trial Court is contrary to law and facts and the same is not sustainable in the eyes of law. It has,

therefore, been prayed that this application seeking leave to file appeal be allowed and leave be granted to the applicant to file appeal.

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

From the record, I find that Harvinder Singh filed the complaint against Darshan Singh, Narinder Singh, ASI Dalip Singh and ASI Dharam Pal for the offences under Sections 379, 504, 506, 447, 440, 427 read with Section 34 IPC at Police Station Mahilpur, District Hoshiarpur. The complaint qua accused No.3 and 4 has already been dismissed by the trial Court vide order dated 17.10.2013 and accused Narinder Singh has already been acquitted vide judgment dated 13.9.2013. Accused Darshan Singh was acquitted by the learned Chief Judicial Magistrate vide judgment dated 14.7.2015. Aggrieved from this judgment, the present appeal along with application seeking leave to file appeal has been filed.

The brief facts of the case as noted down by the learned Chief Judicial Magistrate, Hoshiarpur, in his judgment dated 14.7.2015, are as under:-

“As per the version of the complainant he owns land measuring 2 kanal 10 marlas comprised in khasra No. 28 min 2/4, 3/2 and situated in village Baddon, district Hoshiarpur. The complainant got Wakf Board land in his name measuring 16 marlas out of 36 marlas comprised in khasra No. 76 min adjoining to his above said land in the year 2001 and came into possession of the same after allotment. In the month of

November, 2005 the complainant had sown wheat crop in the above said land. On 16.2.2006 at about 10 A.M. accused Darshan Singh and Narinder Singh with their common intention to mischief made preparation by arming themselves with sickles for causing death or hurt or wrongful restraint to the complainant or fear of death or hurt or restraint and with the intention to commit theft of the wheat crop of the complainant and to cause damage to him forcibly criminally trespassed into the fields owned and possessed by the complainant. After trespassing into the fields both the accused started cutting the wheat crop belonging to the complainant. They were noticed by Sewa Singh, Mohinder Singh and Ram Pal, residents of village Baddon and Rahali. Sewa Singh asked the accused not to cut the wheat crop of the complainant and the accused started hurling abuses to them as well as to the complainant in filthy language and exhorted them to call the complainant there in the fields saying let him come there in the fields they will kill him as well as anybody else coming to rescue of the complainant. Both the accused had the intention to kill or cause hurt to the complainant and with that intention both the accused exhorted the above said persons using filthy language. Ultimately both the accused cut and took away the wheat crop from the area of about 5 marlas and thereby committed theft and caused loss to the complainant to the tune of ₹500/-. The accused No.1 & 2

committed this offence because they will be attracted the complainant to his fields and then both the accused could pick up quarrel with him. The complainant had gone to Delhi same day early in the morning in order to see off his daughter-in-law at Delhi Airport. Earlier to this incident in the month of November, 2002 accused No.1 & 2 started interfering in the peaceful possession of the complainant over an area measuring 16 marlas by throwing manure in the same. Then, the complainant filed a civil suit in the year 2003 against them and the Ld. Civil Judge was pleased to issue ad-interim injunction in favour of the plaintiff (present complainant) and ultimately the said civil suit was decided in favour of the plaintiff (present complainant). The complainant after returning from Delhi and on being informed by Mohinder Singh, Sewa Singh, reported the matter to In-charge Police Post, Ajnoha. ASI Dalip Singh accused No.3, who was posted there on 18.2.2006, but the police neither visited the spot nor took any action against the accused No.1 and 2. The police right from the very beginning was siding with the accused party and that is why no action was taken against them. Thereafter, the complainant moved an application No. 70 DSP(G) before DSP (G)' on 23.2.2006 which was marked to SHO, Mahilpur. Both the parties were summoned to the police station on 2.3.2006 and ASI Sukhwinder Singh directed the complainant to get the land

demarcated first. This direction was signed by the parties and the sarpanch of the village. As per the direction if it was found after demarcation that the accused had cut the wheat crop from the land of the action will be taken against them. The complainant moved application on 3.3.2006 before the Naib Tehsildar, Mahilpur to demarcate the land of the complainant, who ordered Mohinder Pal Kanungo to demarcate the land of the complainant as per the directions in the presence of the police and other respectables of the village. On 12.4.2006 Mohinder Pal Kanungo demarcated the land in the presence of the police and other respectables of the village and at that time the accused did not raise any objection regarding the demarcation and after demarcation it was found that the accused No.1 and 2 had cut wheat crop from the land of the complainant, but even then the police did not take any action against them. Earlier to 12.4.2006 said Kanungo went to village Baddon on different dates and summoned the other party, but they did not come present. Again on 15.5.2006 the complainant moved an application before DSP(G) bearing No. 212 DSP (G) which was ultimately marked to the In-charge Police Post Ajnoha. Incharge of P.P. Ajnoha, Dharam Pal ASI accused No.4 called the complainant to P.O. Ajnoha and instead of taking action against the accused No.1 and 2 he forced the complainant to compromise the matter with accused No.1 and 2

failing which he threatened the complainant to face dire consequences. It happened in the presence of respectable persons who were present there ASI Dharam Pal at the same time threw away the application moved by the complainant alongwith other papers including first report to DSP dated 23.2.2006, direction by SHO for demarcation dated 2.3.2006, for demarcation to Naib Tehsildar dated 3.3.2006 and demarcation report by Naib Tehsildar dated 12.4.2006. Sewa Singh, Mohinder Singh were also present there besides Joga Singh, Kulbaran Singh, Varinder Kumar and Surinder Singh etc. From the above facts it is crystal clear that the offence of theft etc. committed by the accused No.1 and 2 in connivance with accused No.3 & 4 and because that reason no action was taken against the accused No.1 and 2 by the police. Hence, the complainant filed the present complaint against the accused persons.”

I have gone through the judgment passed by the learned Chief Judicial Magistrate, Hoshiarpur. The findings have been given as per evidence and law and the same can not be held as perverse or against the evidence and law. Nothing has been pointed out as to which material evidence has been misread by the Court below and as to which material evidence has not been considered by the Court below.

As per the allegations, the complainant got allotted Wakf Board land measuring 16 marlas out of 36 marlas comprised in Khasra No.76 Min.

adjoining to his above said land in the year 2001 and came into possession of the same after allotment. In the month of November 2005, the complainant had sown wheat crop in the above said land. On 16.2.2006 at about 10.00 a.m., accused Darshan Singh and Narinder Singh with their common intention to mischief made preparation by arming themselves with sickles for causing death or hurt or wrongful restraint to the complainant or fear of death or hurt or restraint and with the intention to commit theft of the wheat crop of the complainant and to cause damage to him forcibly criminally trespassed into the fields owned and possessed by the complainant. After trespassing into the fields both the accused started cutting the wheat crop belonging to the complainant.

The learned Chief Judicial Magistrate, Hoshiarpur, held that firstly in the month of February the wheat crop does not ripe and cannot be harvested. Secondly, the learned Chief Judicial Magistrate, Hoshiarpur, held that no Jamabandi or Khasra Girdawari showing the possession of the complainant has been placed on record. The document placed on record by the complainant does not show this khasra number. A demarcation report is marked and not exhibited which cannot be looked into. The Court below also held that Punjab Wakf Board is the owner of land of Khasra No.76 and as per Khasra Girdawari, it is in the possession of Darshan Singh. Land measuring 1 Kanal 11 Marlas and 5 Marlas were shown in possession of one Sarwan Singh and Gurmukh Singh. Similarly, copy of jamabandi for the year 2008-2009 is also placed on record as Ex.D.3. PW-1 also admitted in cross-examination that Darshan Singh is in cultivating possession of the

land. He admitted that as per Khasra Girdawari and Jamabandi only he and Harvinder Singh are shown in cultivating possession. Darshan Singh is aged about 87 years. It is also admitted by the witness that the case under Section 307 IPC was registered for inflicting the injuries on the person of Amrik Singh and his son Harpreet Singh against them. The Court also discussed the documents Jamabandi and Khasra Girdawari produced by the complainant but these are not related to Khasra No.76. The Court also did not put reliance on allotment letter Mark-A in favour of the complainant. The Court held that the complainant also admitted in cross-examination that he is not having revenue record for his possession over Khasra No.76.

Keeping in view the above findings, I find that the accused Darshan Singh has been rightly discharged by the Court by appreciating the evidence in right perspective.

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

March 10, 2017.

(Inderjit Singh)
Judge

hsp

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