

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

CRM No.A-664-MA of 2016 (O&M)

Date of decision: May 01, 2017

Pawan Kumar

...Applicant

Versus

Satish Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sumit Sangwan, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Pawan Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Satish Kumar and Harpal Kumar, challenging the judgment dated 05.03.2016 passed by learned Judicial Magistrate Ist Class, Kosli, 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, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Pawan Kumar filed a complaint against accused Satish Kumar and Harpal under Sections 323, 324, 452, 506 and 34 IPC. The brief averments of the complaint as noted down in the judgment passed by learned JMJC, Kosli, are as under:-

“2. The brief facts that borne out of the complaint are that on dated 29.09.2011 at about 7:00-7:30 p.m., the accused persons in furtherance of their common intention trespassed into the house of complainant and started abusing him. Thereafter the accused Satish Kumar hit 'Bakdi' on the knee of the complainant due to which he fell down. When he was laid on the ground then the accused persons hit him on his back and accused Satish bit his face above the right eye. He was rescued by his father Ishwar Singh and his wife Smt. Sudesh Kumari from the clutches of the accused persons. Before leaving, the accused persons threatened the complainant with dire consequences. After that incident, when complainant tried to go to the Hospital for treatment he was stopped in the street and beaten again by the above named accused who were having Dandas in their hands. The complainant went to Police Station Jatusana for lodging complaint against the accused persons. The police got admitted the complainant at CHC Gurawada where the doctor advised X-ray for the injured knee. In X-Ray examination, fracture of patella (knee) was found. After doing plaster over his knee, the complainant was advised to take bed rest for 45 days. Although the police registered DDR No. 17 dated 30.09.2011 in this regard but took no appropriate action. After the alleged incident, the accused persons threatened the complainant again for his life. After treatment, the complainant again approached the police station Jatusana and requested for proper investigation but the police refused to take any action and told him that they had already taken the action what they were supposed to do. The complainant forwarded his complaint to S.P. and Dy.S.P. Kosli but all in vain. Hence this complaint.”

Learned JMIC, Kosli, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondents vide impugned judgment dated 05.03.2016.

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

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

The perusal of the findings given by learned Magistrate shows that these have been given as per evidence and law. In no way, the findings

pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below.

From the record, I find that learned Magistrate after going through the evidence on record, found that the complainant had claimed that he was assaulted in the evening of 29.09.2011. It is mentioned in complaint Ex.PW6/A that both accused had assaulted him but perusal of the complaint shows that no specific allegation was levelled against accused Harpal and no specific injury was attributed to him. Learned trial Court further held that as per DDR, which was lodged on the statement of complainant, the facts are completely inconsistent and contradictory to the complaint. The complainant-injured claimed that time of alleged occurrence was around 7-7:30 P.M., while in DDR, he claimed that time was 9:00 P.M. In the complaint it was mentioned that accused persons had trespassed in the house forcefully but in DDR it is clearly stated by the complainant that accused Satish had come in front of his house and called him and he himself had asked Satish to come inside the house. The Court below held that nothing has been mentioned in the complaint regarding the motive. However, the perusal of DDR shows that accused Satish was annoyed with the fact that the complainant was not taking care of his father property.

It is further held by learned trial Court that complainant again changed his stand when he appeared in the witness box as PW6. He deposed that accused persons used to prepare forged degrees and Mark Sheets. It is claimed by the complainant that he had lodged a complaint about their illegal act, so they were nursing a grudge against him. Learned Magistrate further held that complainant mentioned in the DDR that a scuffle had taken place between him and accused Satish and both of them had given slaps and

fist blows to each other. It is also mentioned by the complainant that he had picked a stick and hit it on the person of accused Satish but these facts were not mentioned in the complaint, though stated in the DDR. In the DDR, it is also not mentioned that accused Harpal had also accompanied accused Satish at the time when occurrence took place in his house.

Further, from the record, I find that it is the claim of the complainant that he had received injuries on the leg and knee and fracture was found on his knee. However, his MLR Ex.PW5/A shows that doctor did not notice any mark of injury, not even complaint of pain, swelling or tenderness on any part of his leg or its any part including knee. The doctor had not advised X-ray for knee as claimed by the complainant. Learned Magistrate held that this fact is important as there is delay of almost one day in medico-legal examination of the complainant.

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 05.03.2016 passed by learned JMIC, Kosli, 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.

May 01, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No