

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

CRM-A No. 1681-MA of 2014

Date of decision : May 16 2017

Buta Ram

.....Applicant

Versus

Jag Singh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

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

LISA GILL, J.

The applicant seeks leave to appeal against judgment dated 24.09.2014 passed by the learned Additional Chief Judicial Magistrate, Bathinda whereby respondents No. 1 to 8 have been acquitted of the charge under Sections 452, 427, 354, 323 read with Section 149 of Indian Penal Code ('IPC' for short) and consequently, the complaint filed by the applicant has been dismissed.

Brief facts of the case are that a complaint dated 03.07.2007 under Sections 452, 449, 450, 436, 354, 307, 323, 324, 166, 148, 149, 34 IPC was filed by the applicant. It is stated that the complainant was elected a Member of the Panchayat Samiti, Village Sangat in the month of June, 2002. The accused respondents are residents of village Ghudda. They are alleged to be inimical towards the complainant on the ground of political rivalry in the Panchayat elections. The complainant has an ancestral house

in village Ghudda which was constructed by his forefathers. The complainant's father, it is averred, had purchased a piece of land measuring six marlas adjacent to the said house in the year 1966 from the Rehabilitation department belonging to the Custodian of evacuee property. A boundary wall was constructed to enclose the said plot alongwith the existing house. The complainant, it is submitted, was in possession of this land alongwith the construction raised thereon since its purchase from Rehabilitation department in the year 1966. The accused persons especially respondents No. 1 and 2 used to urinate along the wall of the complainant house. They made obscene gestures in an inebriated condition to harass the complainant and his family members. A complaint was lodged at Police Station Nandgarh in this respect. The accused got agitated. They converted the open space at the back of the complainant's house in a volley ball play ground. The ball would be thrown inside the house only with a view to harass the family members of the complainant household. In order to safeguard against this, height of the boundary wall was raised by the complainant. Enraged at this, respondents No. 1 to 8 hatched a conspiracy with Tejinder Singh, BDPO, Sangat to attack the complainant's house, inflict physical and material damage upon complainant, his family members and property. A false complaint was allegedly lodged by respondent No. 1 before Tejinder Singh, BDPO, Sangat (arrayed as respondent No. 9 in the complaint). Respondent No. 1 complained that the complainant was trying to encroach upon the panchayat land. It is further averred that thereafter, all the accused persons including Tejinder Singh, BDPO and Jagtar Singh, driver of a JCB machine arrived at the house of the complainant alongwith 15/20 other persons in the afternoon of 11.06.2007. All the accused were

armed with lathies, gandhalies, spades and iron rods. They brought a JCB machine to demolish the complainant's house. It was driven by accused No. 10 - Jagtar Singh (it is to be noted that the accused Tejinder Singh and Jagtar Singh were not summoned by the learned trial Court. Revision preferred by the petitioner against the said action was also dismissed). The boundary wall of the complainant's house, a bathroom, a latrine, a water tank, another wall and a door were demolished. Respondents No. 1 and 3 exhorted other accused to pounce upon the ladies of the complainant household, dishonour them and kill them. Allegations of outraging the modesty of the complainant's wife by respondents No. 1 and 2 are raised in the complaint. Some of the other respondents are alleged to have attacked and assaulted the minor daughters as well as mother of the complainant. It is further alleged in the complaint that the accused Tejinder Singh, BDPO exhorted other persons to set the complainant's house on fire. The matter, it is stated, was reported to the police authorities but no action was taken by them, therefore, complaint was filed on 03.07.2007 in respect to the incident which took place on 11.06.2007.

Preliminary evidence was led. The complainant examined HC Jasvir Singh as Cw1, Vidya Devi as Cw2, Jaswinder Kaur as Cw3, Buta Ram as Cw4, AMHC Mewa Singh as Cw5, Mangal Dass as Cw6, Gurvir Singh as Cw7. Respondents No. 1 to 8 were summoned to face trial for the offences punishable under Sections 452, 427, 354, 323 read with Section 149 IPC. As noted earlier, accused No. 9 and 10 were not summoned. Revision preferred by the complainant against their non-summoning was dismissed. In the pre-charge evidence, the complainant examined Vidya Wanti as Cw2, Jaswinder Kaur as Cw3, Dr. Prem Kumar as Cw4, Gurdeep

Singh as Cw8, Hans Raj as Cw9, Cw11 HC Narinderpal Singh and himself as Cw13. Charges were framed against respondents No. 1 to 8. The accused thereafter cross examined Cw2 Vidya Wanti (mother of the complainant), Cw8 Gurdeep Singh independent eye witness, Cw10 Buta Ram (complainant).

The respondents in their statements under Section 313 Cr.P.C. while denying the incriminating evidence put to them pleaded innocence and false implication. It was categorically stated that the complainant had in fact encroached upon the Gram Panchayat land i.e. Shaheda Wala Park. The officials of the District Administration lodged an FIR against the complainant regarding illegal possession of the said park. No fight or incident as alleged had ever taken place. A false complaint has been filed merely to exert pressure for a compromise in the said matter. DW1, Deputy Singh was examined in defence.

Learned trial Court on considering the evidence on record and the facts and circumstances of the case concluded that the complainant had failed to prove its case beyond shadow of reasonable doubt. It has been held by the learned trial Court that there is an unexplained delay in filing of the complaint inasmuch as the incident took place on 11.06.2007 but the present complaint has been filed on 03.07.2007. Accused Tejinder Singh, BDPO and Jagtar Singh, driver of the JCB machine had come to the spot. They in the course of their duty demolished the boundary wall which was illegally constructed by the complainant on land belonging to the Gram Panchayat. Furthermore, the independent witness Gurdeep Singh Cw8 has specifically denied that any such occurrence as stated by the complainant took place. It is, therefore, held by the learned trial Court that there is no

proof reflecting the accused to have demolished the boundary wall. It was further held that the injuries caused on the person of Cw2 Vidya Wanti and Cw3 Jaswinder Kaur were not proved to be caused at the hands of the accused. FIR No. 58 dated 11.06.2007 was admittedly registered against the petitioner and his family members under Sections 153, 186, 148, 149 IPC. Taking into consideration the evidence on record, facts and circumstances, the accused were acquitted by the learned trial Court and the complaint dismissed. Aggrieved therefrom, the applicant seeks leave to appeal against the said decision dated 24.09.2014.

Learned counsel for the applicant submits that specific injuries were received by two persons i.e. Vidya Wanti (Cw2) mother of the complainant as well as Jaswinder Kaur (Cw3) wife of the complainant. Medical evidence on record proves the injuries. Dr. Prem Kumar, Cw4 has proved the injuries on the said persons. The demolition of the boundary wall etc. of the complainant's house is not in question. Therefore, the impugned decision should be set aside and the accused should be convicted as charged and sentenced accordingly.

I have heard learned counsel for the applicant and have gone through the file as well as the record with his able assistance.

As per the complaint, the incident in question took place on 11.06.2007. Respondents No. 1 to 8 alongwith Tejinder Singh, BDPO and Jagtar Singh, driver of the JCB machine allegedly demolished the boundary wall of the complainant house. It is not denied that accused Tejinder Singh, BDPO and Jagtar Singh, driver of the JCB machine were not summoned by the learned Judicial Magistrate First Class, Bathinda on 27.02.2010 at the time of summoning the other accused. A perusal of order dated 27.02.2010

available on the record reveals that it is specifically mentioned that Tejinder Singh, BDPO and Jagtar Singh, driver of the JCB machine were acting in the course of their duty. The applicant-complainant had encroached upon the land of Gram Panchayat and demolition was carried out pursuant to an order passed by the District Magistrate. Reference is made to the inquiry report dated 18.09.2007 (Ex. PW1/B) submitted by the Deputy Superintendent of Police (Rural) after inquiry into the matter. Revision petition preferred by the applicant-complainant against non-summoning of the said accused was dismissed by the learned Additional Sessions Judge, Bathinda on 30.09.2011 while reiterating that the said accused persons were acting in the course of their duty while executing the orders of the District Magistrate, Bathinda. Cw2 Vidya Wanti as well as Cw3 Jaswinder Kaur have admitted that demolition was carried out by the BDPO with the help of police using a JCB machine. It is further admitted that FIR No. 58 dated 11.06.2007 under Section 353 IPC was registered at Police Station Sangat against the applicant and his other family members. Cw2 Vidya Wanti has admitted in her cross examination that they made efforts to stop the demolition of the wall. It is, therefore, apparent that the boundary wall was demolished by the government officials in the course of their duty pursuant to specific orders. As per report dated 18.09.2007 by the Deputy Superintendent of Police (Rural) Bathinda, representations submitted by the complainant and his wife in respect to the demolition of the wall etc. were thoroughly inquired into. The said representations were found to be incorrect. The complainant, it was observed, wished to encroach upon the Gram Panchayat land i.e. Shaheda Wala park. He wished to exert pressure upon the Gram Panchayat and enter into some compromise. Thus, there is

no infirmity in the finding of the learned trial Court that the complainant has failed to prove that the boundary wall of his house was demolished by respondents No. 1 to 8.

The argument of learned counsel for the applicant that the medical evidence on record proves the serious injuries received by Vidya Wanti Cw2 and Jaswinder Kaur Cw3 (mother and wife of the complainant) is not tenable. As per the Medico Legal Report (Ex. Cw4/C) Jaswinder Kaur suffered multiple abrasions with oozing of fresh blood of varying sizes from 2-4 cms x 0.1 cm on right forearm on anterior surface as well as multiple abrasions with oozing of fresh blood of varying sizes ranging from 2-4 cm x 0.1 cm on whole of the left forearm. As per the MLR (Ex. Cw4/B) in respect to Cw2 Vidya Wanti, she was found to be complaining of pain on the front of forehead near hairline; pain on chest on the right side and pain in the left thumb. It is to be noted that Dr. Prem Kumar Verma (Cw4) has admitted that injuries on both the said persons were superficial in nature and possibility of these injuries being self suffered or due to a scuffle cannot be ruled out. Dr. Prem Kumar Verma Cw4 could not even affirm whether the said injured were admitted in the hospital or whether any intimation regarding their arrival was sent to the police. The MLR does not refer to any assault or scuffle in which the said persons were involved in. The medical evidence on record does not advance the case of the complainant in any manner. It is not proved on record that the injuries on the person of Vidya Wanti and Jaswinder Kaur were suffered by them at the hands of respondents No. 1 to 8.

Furthermore, it is relevant to note that Cw8 Gurdeep Singh, an alleged eye witness stated that he was not even present at the time of

occurrence. He expressed ignorance about any dispute, which the applicant might have regarding land of the park/panchayat. Cw8 stated that he never recorded any statement before the police and neither had he gone to the police station with the complainant. Gurdeep Singh further stated that he never went to any hospital for the treatment of any family member of the complainant. It is specifically stated by Gurdeep Singh that he is not a summoned witness. He was brought by the applicant personally in his car and he deposed being a co-villager of the applicant.

In the facts and circumstances of the case, it is apparent that the complainant has miserably failed to prove his case beyond the shadow of reasonable doubt against respondents No. 1 to 8. Similarly, there is no evidence on record to prove the commission of the offence punishable under Section 354 IPC against respondents No. 1 to 8. It would be unsafe and unjustified to rely solely on the testimony of Cw2 Vidya Wanti and Cw3 Jaswinder Kaur to convict the respondents for the offences punishable under Section 354 IPC in the factual matrix of the present case.

It is a settled position that there have to be strong, cogent and compelling reasons to set aside acquittal of the accused. Merely because another view may be possible cannot be a ground for reversing a judgment of acquittal. Hon'ble Supreme Court in **Mahamad Khan Nathekhan versus State of Gujarat (2014) 14 SCC 589** while reiterating the basic principles has specifically held that in case of acquittal there is a double presumption of innocence in favour of the accused which stands reinforced, reaffirmed and strengthened by their acquittal by the trial Court.

Learned counsel for the applicant is unable to point out any illegality, infirmity or perversity in the impugned judgment dated

24.09.2014 passed by the learned Additional Chief Judicial Magistrate,
Bathinda which calls for any interference by this Court.

Consequently, finding no merit, leave to appeal is declined.

May 16, 2017
rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes

Whether reportable : Yes/No