

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

CRM No.A-184-MA of 2015 (O&M)

Date of decision: August 21, 2017

Gurpal Singh

...Applicant

Versus

Subhash Chander Kataria and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.K.Girdhar, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Gurpal Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Subhash Chander Kataria and Sourav Kataria, challenging the judgment dated 04.12.2014 passed by learned Addl. Chief Judicial Magistrate, Faridkot, 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 Gurpal Singh filed a complaint against accused Subhash Chander Kataria and Sourav Kataria under Sections 500, 506, 120-B, 452 and 34 IPC. The brief averments of the complaint as noted down in the judgment passed by learned ACJM,

Faridkot, are as under:-

“1. It is alleged by the complainant that he was Sub-Inspector with Punjab Police, presently posted at police lines, Faridkot. He resides near Narinder Cinema, Kotkapura, having constructed his new house. Accused are mischievous elements. For a long time, they are harassing the complainant and his family without any reason. As plaintiff was posted in this very district, therefore he purchased a plot in the name of his wife Gurmeet Kaur and constructed his house at Kotkapura where he was residing. From that very day, the accused are harassing the complainant and his family so much so that unable to cope with their activities, Gurmeet Kaur got registered FIR with PS City Kotkapura, which is still pending in the Court. The land which he had purchased in the name of Gurmeet Kaur has been entered in her name in the municipal record since 1994. The land of accused Subhash Chander adjoins this land. Complainant has left some vacant space while constructing his house for his own convenience, but accused Subash Chander wants to encroach upon this vacant space. On 3.11.2005, when complainant tried to affix a gate in his land, Subash Chander raise hue and cry without any reason and insulted the complainant and his family that complainant wanted to take forcible possession of the land. All the accused also hurled abuses and stole away pole and wire (fencing) belonging to the complainant. They threatened the complainant that they will get him dismissed from the job and will get him killed. Complainant reported this matter to PS City Kotkapura. He was asked to produce record on 4.11.2005 which he produced in the police station. However, accused Subash Chander despite having been directed to produce the documents of his title, for which he sought one week, could not produce the same till 12.11.2005. Complainant made application to SSP, Faridkot, copy of which is mark-A. On the intervening night of 4/5.11.2005, inconvenience with each other accused demolished the wall got constructed by the complainant. Rather they filed false applications against the complainant that they were the owners of the disputed land. The matter was inquired by DSP, Faridkot. Copy of inquiry report is Mark-B. The applications, which accused Subash Chander moved against the complainant before Human Rights Commission were also inquired by SSP, Faridkot and reports were sent to the Commission, copies of which are Mark-C to Mark-H. Subash Chander made false applications against the accused to Deputy Commissioner, Faridkot, copy of which is Mark-J. Inquiry report at 28.2.2008 is Mark-K. Though all the applications made by the accused to harass and insult the complainant were found to be false, still the accused got news items published in newspapers only to defame and insult the complainant. Newspaper cuttings are Mark-L to Mark-O.

Complainant and his family are living their life and doing job under fear, despite the fact that applications by accused were found to be false. Complainant has suffered irreparable loss due to the act of the accused. No doubt Gurcharan Singh, Jasbir Singh, Bhagwan Singh Ex.Sarpanch etc. made statements in favour of the complainant in the inquiries against him but still on account of the averments by the accused, reputation of the complainant and his family was lowered in their eyes. Their reputation was lowered in the society and the department also. On 30.8.2009 at about 12/12:30 complainant along with his wife Gurmeet Kaur, son Amandeep Singh and one Jand Singh was present at his house when accused came there and started hurling abuses. They also stated that complainant side could not do anything despite having got registered cases against them and they were discharged from those cases. Complainant and his family tried to reason with them as to why they were insulting them. Jand Singh also tried to request them to desist from their act that they were educated people but accused Gaurav Kataria stated that the persons called by them had not come today and on some other day they will come and will teach a lesson to the complainant. He also tried to enter into scuffle with the complainant, but was prevented with the intervention of Jand Singh. Hurling abuses, accused left the spot. Complainant informed the police station City Kotkapura as to this occurrence, but as always, police did not take any action against the accused. Earlier also complainant made many applications at police station City Kotkapura as to various incidents but no action was taken in those. Those applications will be produced during evidence by the complainant. As to the incident dated 30.08.2009, complainant made application to SSP, Faridkot on the very next day, but no action was taken on that. Therefore, present complaint had to be filed.”

Learned ACJM, Faridkot, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondents vide impugned judgment dated 04.12.2014.

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 can be held as perverse or against the evidence and law. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned Court below.

The perusal of the record shows that there are three occurrence in the present case, first of 03.11.2005, second of intervening night of 4/5.11.2005 and third occurrence is of 30.08.2009. Learned Magistrate held that this complaint has been filed on 01.09.2009. For the occurrences of 03.11.2005 and of intervening night of 4/5.11.2005, there is delay of more than four years in filing the complaint. There is nothing to explain as to why the complaint has not been filed qua these occurrences.

Learned Court below held that complainant failed to prove these occurrences and also failed to prove that property is owned by him in which he was fixing the gate. The Court also held that there is nothing that complainant has seen the accused demolishing the wall during the intervening night of 4/5.11.2005. The Court further held that the complainant failed to establish these occurrences that they really took place. The litigations between the parties were pending. The Court also held that only independent witness Jand Singh was not examined, who could have brought out the truth. Learned Magistrate further held that qua occurrence of 30.08.2009, there is only statement of complainant, which is not corroborated by any of the independent witness. The complainant further admitted that he was in service and whenever he comes from duty, he enters

evidence available with him that on that day he was at home, rather, he stated that he does not even remember as to where he was posted on that day whether in Faridkot, Mansa or other district.

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 04.12.2014 passed by learned ACJM, Faridkot, 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.

August 21, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No