

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

**CRM No.A-4-MA of 2014 (O&M)**  
**Date of decision: March 22, 2017**

Om Parkash

...Applicant

Versus

Shanti Devi and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.Kunal Dawar, Advocate  
for the applicant.

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**INDERJIT SINGH, J.**

**CRM No.26 of 2014**

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 11 days in filing the application seeking leave to appeal, is condoned.

**CRM No.A-4-MA of 2014**

Applicant-Om Parkash has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Shanti Devi and other respondents, challenging the judgment dated 09.09.2013 passed by learned Judicial Magistrate Ist Class, Fatehgarh Sahib, Camp Court at Amloh, 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

further stated that judgment of acquittal passed by learned trial Court is based on upon total misreading and mis-appreciation of evidence on record. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Om Parkash filed a complaint against accused Shanti Devi, Purshotam Lal, Mukesh Kumar and Rajinder Singh @ Titu under Sections 295-A, 506, 452 and 34 IPC. The averments of the complaint as noted down in the judgment passed by learned JMIC, Fatehgarh Sahib, Camp Court Amloh, are as under:-

*“1. Present complaint has been filed with the averments that the complainant is running business of STD/PCO and sale of electric material. One shop which was originally owned by father of the complainant was gifted to the complainant vide Deed dated 7.2.2000. Earlier that shop was under mortgage with Shubhkaran Gupta vide Regd. Mortgage Deed dated 12.12.1985, which was redeemed by the father of the complainant vide Receipt dated 9.9.1999 and the complainant took the shop from his father on Rent vide Rent Note dated 13.9.1999 on 27.9.1999. The accused, however, maltreated and beat up the complainant and the complainant lodged FIR dated 7.12.1999. Since there was dispute between the parties regarding possession of shop, therefore proceedings U/S 145 Cr.P.C were initiated. It is further averred that on 14.12.2000 at about 1.00 PM, SDM, Amloh visited the shop and the complainant opened and locked the disputed shop in his presence. Then and there Rajinder Kumar and other accused persons man handled the complainant and insulted him by pulling his beard and he was thrown on the floor. Accused Purshotak Lal hit him with foot on the stomach of the complainant. The complainant was rescued from the clutches of the accused persons by his mother Tulsa Devi, rather his sister Shanti Devi also his mother Tulsa Devi. Accused Rajinder Kumar Titu and others with common intention also beat the daughters of the complainant namely Anuradha and Meera Devi. The occurrence took place in the shop in dipsute. Due to the assault, Anuradha daughter of the complainant lost her gold chain. The occurrence was witnessed by Fateh Chand son of Master Jai Kishan, Manoj Kumar and Ram Saran. The complainant also lodged an FIR No.16 dated 14.12.2000 at Police station Mandi Gobindgarh but the police did not take any action. Hence this complaint.”*

The complainant examined himself as PW-1, PW2 HC Mohan Singh, who produced FIR No.16 dated 14.12.2000 Ex.P5. PW3 Fateh Chand supported the version of the complainant. PW4 Anuradha deposed regarding visiting of SDM in her shop on 14.12.2000. She also deposed regarding inflicting injuries to Shanti Devi and Tulsa Devi by the accused. PW5 Dr.Baljit Singh deposed regarding examining of Om Parkash, Tulsa Devi and Anuradha and proved their MLRs Ex.PW5/A to Ex.PW5/C respectively.

In defence, accused tendered certified copy of plaint in Suit dated 28.9.2000 Ex.D3, written statements,, certified copy of judgments and decree sheets, certified copy of compromise Ex.DX and report of Local Commissioner was also adduced in defence evidence.

Learned JMIC, Fatehgarh Sahib, Camp Court at Amloh, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondents vide impugned judgment dated 09.09.2013.

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.

From the record, first of all, I find that qua same occurrence,

did not take any action and filed cancellation report in that FIR. The present complaint has been filed on 13.08.2002 after a long period. Further, I find that there is no documentary evidence on record to show presence of SDM, Amloh, at the spot nor SDM, Amloh has been examined. If SDM, Amloh was present there on the spot in the proceedings under Section 145 Cr.P.C., then there must be other officials; his driver, gunman etc. and other staff might have also been present there but none of them has been examined.

Learned Court below has also gone through the report of the Local Commissioner dated 03.12.1999 Ex.DX, according to which, the property in dispute was under the lock and key of accused No.1. The Court also relied upon the compromise Ex.D1 dated 23.05.1981 and found that a reasonable doubt exists regarding the complainant's version qua ownership and possession of the property in dispute. It is contended at the time of arguments that civil suit has been decided in favour of the accused.

As per compromise Ex.D1, the tenant himself had surrendered the possession in the wake of the destitute widow status of Shanti Devi and the portion in question was given in lieu of maintenance which a destitute daughter is entitled. The Court held that when the physical possession of the complainant as well as the ownership of the complainant is full of doubts, then the material version qua the quarrel in the shop in question itself becomes doubtful. Learned Magistrate further held that in the facts and circumstances, independent testimony like of SDM was necessary to prove the case beyond doubt.

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 09.09.2013 passed by learned Judicial Magistrate Ist Class, Fatehgarh Sahib, Camp Court at Amloh, 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.

March 22, 2017  
Vgulati

(INDERJIT SINGH)  
JUDGE

Whether speaking/reasoned  
Whether reportable

Yes  
No