

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

CRM-A-403-MA of 2017.
Decided on:-July 18, 2017.

Rajpal alias Rajbir.

.....Applicant.

Versus

Anil and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

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

HARI PAL VERMA, J.

The applicant has filed the present application under Section 378(4) of the Code of Criminal Procedure for grant of leave to appeal against the judgment dated 27.01.2017 passed by learned Judicial Magistrate 1st Class, Charkhi Dadri, whereby respondents were acquitted of the charges levelled against them in the complaint filed by the applicant.

Briefly stated, the applicant-complainant has filed a complaint under Sections 379, 382, 351, 356, 341, 427, 447, 451, 452, 457, 323, 506, 147 and 148 IPC against the respondents-accused.

Allegations against the accused are that the complainant has purchased a plot measuring 229 sq. yards 6 inches vide registered sale deed No.1847 dated 27.07.2005 from accused Rawat son of Chand Ram (since deceased) for a sale consideration of Rs.46,000/-. Since the date of sale deed, the applicant-complainant is owner in possession of said plot. However, when he started raising construction over this plot, the respondent-accused No.1 filed a civil suit through his sister. The said suit was dismissed by the

civil Court vide judgment dated 21.01.2012. After dismissal of the suit, the applicant-complainant again started raising construction over the plot and constructed the boundary wall upto 7 feet. He also stored the iron girder, windows, window frame and other construction material. However, on 01.02.2012 in the night at about 8.00-9.00 P.M., accused persons along with 15-20 other persons came along with wooden and iron sticks in 3-4 vehicles. The accused had forcibly entered into the house of the complainant and had demolished the boundary wall and two walls of the room. They also threatened the complainant and his wife and taken away seven girders, window frame and construction material lying there.

In support of his complaint, the applicant-complainant examined himself as CW1, Partap Singh as CW2, Amarjeet Singh SDE as CW3, Anita as CW4, HC Bal Kishan as CW5 and Rohtas as CW6.

On the basis of preliminary evidence, the accused were summoned to face trial for the offence under Sections 147, 148, 451, 452, 447, 341, 427, 379, 356, 382 and 506 IPC vide order dated 02.08.2016 passed by the trial Court.

In his pre-charge evidence, the applicant-complainant examined himself as CW3, Constable Jaipal as CW1, Anita as CW2 and Rohtash as CW4. On finding a prima-facie case, charge under Sections 147, 148, 451, 452, 447, 341, 427, 379, 356, 382 and 506 IPC read with Section 149 IPC was framed against the accused, to which they did not plead guilty and claimed trial.

In the post-charge evidence, the accused did not cross-examine

the witnesses of the applicant-complainant.

Statements of the accused as provided under Section 313 Cr.PC were recorded wherein all the incriminating evidence was put to them to which they denied and pleaded false implication. However, no evidence in defence was led by the accused.

After recording the evidence and going through the record, the trial Court has observed that it is the case of the complainant that on the date of occurrence, the accused persons forced their entry into the house of complainant and demolished the boundary walls and two other walls of the complainant. The accused persons were also stated to have taken away the construction material lying at the spot. The trial Court found that both the independent witnesses are related to each other. CW2, namely, Anita and the complainant as CW3 are the wife and husband. Therefore, the trial Court had not given any credibility to the deposition of these two witnesses. The complainant in his deposition has stated that the incident in question was seen by his wife and various other inhabitants of the village. Therefore, it was incumbent upon the complainant to examine those inhabitants of the village, but no such person was examined by him, which casts a doubt on the version of the complainant. Similarly, the complainant failed to adduce any material on the file which could show that the construction material taken away by the accused was ever recovered from the possession of the accused persons. Thus, the trial Court vide impugned judgment dated 27.01.2017 acquitted all the respondents-accused of the charge levelled against them except accused Rawat, who has already died.

Learned counsel for the applicant-complainant has argued that the applicant was compelled to file the complaint before the trial Court on 12.04.2012 as the police did not entertain his complaint and after recording the preliminary evidence, the respondents-accused were summoned to face trial. But the trial Court had dismissed the complaint by adopting a hyper-technical view and ignoring the cogent and convincing evidence led by the complainant. The complainant has proved that the accused entered his house under construction and after causing damage to the property, they had taken away the construction material with prior meeting of minds and common intention. The finding of the trial Court that there are major contradictions is wrong.

Having heard learned counsel for the applicant and perusing the record, this Court finds that there is no substance in the contentions raised by learned counsel for the applicant.

After framing of the charge and considering the evidence led by the applicant-complainant, the trial Court has found that the complainant has not produced any independent witness in support of his case. The only eye witness of the occurrence examined by the applicant besides himself is CW2 Anita, who is his wife and as such, she is an interested witness. It is the deposition of the applicant that the incident in question was seen by his wife and various other inhabitants of the village, but no such inhabitant of the village was examined by him, which casts a doubt on the version of the complainant.

Similarly, the applicant-complainant has also failed to adduce

any evidence that the construction material i.e. iron girder, windows, window frame etc. which were taken away by the accused were ever recovered from the accused persons. Though the applicant has placed on file some bills Ex.C4 to C7 pertaining to the items purchased by him, but these bills were never proved by him as, no person came forward to prove those bills. The plea of the applicant that the photographs establish the occurrence, cannot be accepted as the photographs in question nowhere suggest that the same pertain to the same spot of occurrence. Further, the background of the parties is that they were already in civil litigation. As such, the evidence produced by the complainant in support of his version casts serious doubt on the truthfulness of his case.

Learned counsel for the applicant has failed to show any misreading of evidence by the trial Court and has not pointed out any legal error in the judgment under challenge which may warrant interference by this Court. When no evidence to connect the accused with the alleged crime is available on record, no case is made out for any interference in the impugned judgment of acquittal passed by the trial Court.

Accordingly, the present application, being devoid of any merit, is dismissed. Leave to appeal is declined.

July 18, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No