

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

**CRM No. A-365-MA-2015 (O&M)  
Date of decision: 21.02.2017**

**Joginder Singh**

**..... Applicant**

**Versus**

**State of Punjab and others**

**..... Respondents**

**CORAM: HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Kamal Narula, Advocate for the applicant.

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**LISA GILL, J.**

The applicant seeks leave to appeal against the judgment dated 26.10.2012 passed by the learned Judicial Magistrate 1<sup>st</sup> Class, Ferozepur, whereby his complaint under Sections 323,379,354,452,506,34 of the Indian Penal Code ('IPC' for short) against respondents No. 2 to 4 has been dismissed.

Brief facts of the case are that the applicant filed a complaint under Sections 323,379,354,452,506,34 of the IPC against respondents No. 2 to 4. As per the allegations, the complainant started running a Flour Mill within his house at the village for earning his livelihood. His business started to flourish. The complainant installed a drawer near the weighing machine and started putting his daily earning in this drawer. A Spice Milling Machine was also installed on the premises from which the complainant started earning Rs. 300/- to Rs. 400/- per day.

Respondent No. 2 i.e. accused-Hansa Singh is the complainant's cousin brother (*bhua's* son). Respondent No. 3-Challo is the wife of respondent No. 2. Respondent No. 4 is a relative of respondent No.

2. It is averred that for the three years preceding the aforesaid complaint, someone was stealing money from the drawer near the Flour Mill Machine. The complainant suspected his neighbours, due to which there were quarrels with his neighbours but the guilty person could not be identified. The complainant in order to repay his loan, sold two out of three acres of his land. Respondents No. 2 and 3 on coming to know about the sale of this land asked for some money out of the sale proceeds as they were in need of money. They promised to return the amount within a year. However, the complainant refused to part with any of the sale proceeds, on which respondents No. 2 and 3 were unhappy.

Respondent No. 3 used to visit the complainant's house on the pretext of teaching the art of sewing and embroidery to the complainant's daughter. Respondent No. 3 used to steal money from the drawer near the Flour Mill Machine and picked up plastic bags out of the milling spices area. It is mentioned in the complaint that the complainant build his house, repaid the loan of the Flour Mill as well as other loans out of the sale proceeds of the land sold by him. The remaining amount was kept by him for the marriage of his elder daughter. In the month of May, 2008, respondents No. 2 and 3 along with respondent No. 4 again requested the complainant to advance some money with a promise to repay the same at the earliest. Acceding to their request, the complainant advanced a sum of Rs. 62,000/- kept in an iron box in his house on 17.05.2008 to respondents No. 2 and 3. The complainant wanted respondent No. 2 to execute a written pronote on the next day in respect to this amount but respondent No. 2 expressed his unwillingness to execute the pronote.

Two days thereafter respondent No. 3 was present in the complainant's house on the pretext of teaching his daughter how to sew

clothes. While going back, she tried to steal a sum of Rs. 300/- from the drawer by using a duplicate key. Then the complainant came to know that Challo Bai was stealing money as well as spices from their premises. She was caught red handed by the complainant's wife. A duplicate key, it is alleged was prepared by respondent No. 3, three years prior thereto. The complainant on the same day moved an application before the SHO, Police Station Mamdot but no action was taken. It is alleged that a week prior to the filing of the complaint dated 12.09.2008, accused No. 3-Gurmeet Singh came to the complainant's house in a drunken state at night and asked the complainant to effect a compromise with the other two accused as all of them were relatives. Gurmeet Singh said that both these accused would come and apologize to him. The matter should accordingly be resolved. In the meantime the complainant's children went to the neighbour's house to watch television. The complainant himself left his house to collect a Spray Tank from his Dhani as he required it for spraying his fields on the next morning. The complainant did not respond to the proposal set forth by respondent Gurmeet Singh which enraged him. Gurmeet Singh while leaving threatened the complainant for not accepting his request.

The complainant's wife was alone at their residence after the complainant left to collect the spray tank. Their children had gone to the neighbours to watch television. Thereafter, respondents No. 2 to 4 armed with dang, sword and kappa entered the complainant's house with an intention to destroy their house. Respondents No. 2 and 4 forcibly caught hold of the complainant's wife from her arms with bad intentions. Respondent No. 3 slapped the complainant's wife on her face while stating that they would teach them a lesson for making a complaint against them. They opened the iron box

lying in the same room and took out an amount of Rs. 1.63 lakhs as well as gold weighing two tolas along with silver *panjebs* and silver foot rings, which had been kept by the complainant for the marriage of his elder daughter. While the said accused were abusing the complainant and his wife, Jeeto Bai and Mangal Singh arrived. They saw all the accused persons coming out of the complainant's house. Respondent No. 3 was seen holding a plastic bag. Gurdeep Singh son of Kashmir Singh also saw the said persons armed with sword, dang and kappa.

The complainant in his preliminary evidence stepped into witness box as CW-1. The other witnesses examined were Parro (CW-2), Mangal Singh (CW-3) and Jeeto Bai (CW-4). The accused were summoned for the offences punishable under Sections 323,379,354,452,506,34 of the IPC vide order dated 21.12.2009. The above said witnesses were again examined in the pre-charge evidence. Charges were framed against the accused under sections 323,379,354,452,506,34 of the IPC. The accused persons while recording their statements under Section 313 Cr.P.C denied the incriminating evidence put to them. They pleaded false implication in this case. No evidence was led in defence.

Learned trial Court while considering the entire facts and circumstances concluded that the complainant had miserably failed to prove the case against the accused persons beyond a shadow of reasonable doubt therefore the complaint was dismissed.

Learned counsel for the applicant submits that the learned trial Court has ignored specific evidence in the shape of testimony of the complainant and the other witnesses. It is contended that there is ample evidence on record to proceed against the accused persons. The complaint has

thus been wrongly dismissed. Learned counsel for the applicant has referred to complaint dated 12.09.2008 as well as the statements of the witnesses, which have been produced in Court today. It is prayed that the impugned judgment dated 26.10.2012 be set aside and respondents No. 2 to 4 be convicted of the offences as charged and suitably punished.

I have heard learned counsel for the applicant and have perused the file as well as the complaint and the statements of the witnesses produced in Court today with his assistance.

There is no dispute that the complainant and respondents No. 2 & 3 are closely related. It is further admitted that there is a dispute between the parties over a sum of Rs. 62,000/- given by the complainant to respondent No. 2. Even as per the allegations in the complaint the said sum of Rs. 62,000/- was not returned by respondent No. 2. It is to be noted that as per the allegations in the complaint, respondent No. 3 used to steal money from the drawer next to the Flour Mill Machine. It is alleged that she had a duplicate key. However, it is a matter of record that the said duplicate key, allegedly recovered from respondent No. 3 by the complainant's wife, has never been produced before the learned trial Court. CW-2, Parro, the complainant's wife, has deposed that her husband and her son used to remain at the Flour Mill all the time. The custody of the locker drawer was always with them. CW-3, Mangal Singh, has admitted that he has never seen the accused persons committing theft in the complainant's house or at the flour mill. No detail, whatsoever is forthcoming in this respect. The date or the time of occurrence has not been mentioned in the complaint neither have the witnesses made a mention about the same in their deposition before the learned trial Court. The

complaint is completely bereft of the material details, which are necessary to prove the commission of the offences as aforementioned.

It is highly improbable that in case respondents No. 2 to 4 were armed with dang, sword and kappa, no injury would have been caused by them. As per the allegations in the complaint, the complainant's wife was tied up with the help of a rope. His wife was left behind in a very bad condition with her clothes torn. However, there is no medical evidence on record or any other evidence to substantiate such allegations except the bald statement of the complainant and his wife. Both CW-3 (Mangal Singh) and CW-4 ( Jeeto Bai), without specifying the date have stated that in June, 2008 they saw the accused persons leaving the complainant's house. They went inside the complainant's house and found the complainant's wife tied to a bed, in a near unconscious state. She revealed that she was beaten by the accused persons. As noted above, there is no medical evidence on record to prove the above said averments. Furthermore, CW-2 Parro, the complainant's wife, in her cross-examination has admitted that there was no mark of injury on her person. She never handed over any of her torn clothes to the police. Neither were any shown. She further admitted that she did not have herself medically examined. There is also no evidence to prove the commission of an offence punishable under Section 354 of the IPC. The ingredients of Section 354 of the IPC are clearly not made out.

There are material contradictions in the statements of the complainant and his wife which casts a serious doubt on their credibility. CW-1, the complainant stated that his children were present in their neighbour's house for watching television at the time of the alleged occurrence. However, CW-2, Parro the complainant's wife has stated that they had a television and a fridge in their house. This is in stark contradiction to her husband who stated

that they had no television in their house. Furthermore, CW-2 has stated that they had a money dispute with the accused and the present proceedings were thus launched against the accused. CW-4, Jeeto Bai in her cross-examination has stated that no hue and cry was raised by the complainant's wife. She was all alone in the house and the house was locked from inside. The dispute regarding the amount of Rs. 62,000/- is duly admitted by complainant- Joginder Singh. It is admitted by all the witnesses that the complainant's house is surrounded by a number of other houses. The complainant has indeed failed to prove his case against the accused persons.

In these circumstances, it has been rightly held by the learned trial Court that offences punishable under Sections 323,379,354,452,506,34 of the IPC are not proved against respondents No. 2 to 4. It is a settled position of law that there have to be clear, strong and substantial grounds for setting aside a judgment of acquittal. It cannot be set aside merely because another view is possible. The Hon'ble Supreme Court in **Mahamad Khan Nathekhani V. 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 as it 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 26.10.2012 passed by the learned Judicial Magistrate 1<sup>st</sup> Class, Ferozepur which warrants any interference by this Court. Consequently, leave to appeal is declined.

There is an application for condonation of delay of 792 days in filing of this appeal. It is submitted that an appeal was preferred by the applicant before the learned Additional Sessions Judge, Ferozepur against the

impugned judgment dated 26.10.2012 under a mistaken impression/wrong advice. The said appeal was dismissed on 14.01.2015 being not maintainable. It is due to this reason that a delay of 792 days in filing the present appeal has occurred.

As the matter has been decided on merits, the question of condonation of delay has been rendered academic. Application is, accordingly, disposed of. Leave to appeal is declined.

21.02.2017  
PA

(LISA GILL)  
JUDGE

*Whether speaking/reasoned* : *Yes/No.*  
*Whether reportable* : *Yes/No.*