

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

**CRM-A-640-MA of 2015
Date of decision :-5.9.2017**

Mahender

..... Applicant

Versus

Om Parkash and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Mr. Rakesh Nagpal, Advocate
for the applicant.

Mr.Munfaid Khan, Advocate
for respondents No.1 to 6.

Mr.Gaurav Bansal, AAG, Haryana.

H.S. MADAAN, J.

Complainant Mahender son of Chuni Ram, aged 50 years, resident of village Dangra, Tehsil Tohana, District Fatehabad had filed a private complaint under Sections 323, 427, 452, 506, 342, 148 IPC against accused Om Parkash, Parveen Kumar, Manjit, Naveen, Krishan and Moda.

The allegations in the complaint, briefly stated, are that on 26.7.2009 at about 7:00 a.m. when complainant Mahender was returning to his village Dangra on his bicycle from Tohana, at that time Om Parkash son

of Chatter Singh, Krishan son of Sadhu Ram, Manjit Singh son of Chandgi Ram, Pawan son of Balwan and Om Pati wife of Balwan were coming from village Dangra on two motorcycles; that the motorcycles were brought in front of bicycle of complainant with the result he fell down; that all of them started abusing the complainant; that complainant raised alarm which attracted several persons from the nearby area, who rescued him and he went home. Thereafter, when complainant was sitting in his house and his sons were also there, then such accused in prosecution of their common object armed with lathies and pistol came there; that Om Parkash had given lathi blow hitting complainant on right eye, Manjit and Naveen had given lathi blows on left arm of the complainant, Moda gave lathi blow on little finger of complainant whereas lathi blow given by Krishan hit right shoulder of wife of complainant, Parveen gave lath blowi on the head of wife of complainant, thereafter, Manjit, Naveen, Moda and Krishan made sons of complainant namely Sushil and Vikas fall on the ground and gave them lathi blows on arm of Sushil and head of Vikas; that they caused damage to utensils and other household articles of complainant; that on hearing alarm, Labh Singh son of Sohan Lal, resident of village Dangra and persons from neighbourhood gathered there; that the matter was reported to Sarpanch as well to the police and that on arrival of the police, the assailants escaped from the spot while holding out threat to kill them. In the melee, the pistol of Naveen fell down which was taken away by him. The complainant, his wife and his both sons were medically examined. Though the police was informed but the police instead of registering the FIR, involved the complainant and his family members in a false case.

After recording of preliminary evidence, all the accused were ordered to be summoned. They put in appearance. The complainant led pre-charge evidence. Thereafter, accused were charge-sheeted for the offences under Sections 341, 148, 452, 323, 427 and 506 read with Section 149 IPC, to which, they pleaded not guilty and claimed trial. The complainant was called upon to lead evidence after framing of charge. Learned defence counsel had made a statement that he did not want to cross-examine any witness in after charge evidence.

Statements of accused were recorded under Section 313 Cr.P.C. in which the accused while denying the incriminating circumstances appearing against them submitted that they were innocent and had been falsely implicated in the case.

During their defence evidence, the accused examined Raj Singh, Criminal Ahlmad as DW1, who produced the summoned record of case titled as "*State Versus Mahender Singh etc.*", under Sections 341, 283, 506, 34 IPC, registered with Police Station City, Tohana tendering documents. With that evidence of defence was closed.

After hearing arguments, learned trial Magistrate dismissed the complaint and acquitted the accused of the charge vide order dated 25.2.2015.

Feeling aggrieved, the complainant has approached this Court moving an application under Section 378(4) of Code of Criminal Procedure seeking grant of Special Leave to appeal from order of acquittal dated 25.2.2015 passed by learned Judicial Magistrate Ist Class, Tohana.

On notice, the respondents put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record and I find that no ground is there to grant the special leave to appeal since there is no infirmity or illegality in the impugned judgment.

Learned counsel for the applicant has contended that the incident which is given in the complaint is counter version of the incident with respect to which FIR for the offences under Sections 341, 283, 506, 34 IPC was registered with Police Station City, Tohana, record of which had been brought by DW1 Raj Singh, Criminal Ahlmad. The injured had been medico legally examined. The defence had not explained the injuries on the person of complainant, his wife and sons, therefore, accused should have been convicted and sentenced but they were wrongly acquitted by the trial Court. Whereas learned counsel for the respondents has contended that no such incident as alleged in the complaint had taken place. As a matter of fact it is sheer concoction which has been brought forward to pressurize the accused party in the challan case registered against complainant and his family members. The instant complaint was filed by the complainant after more than 9 months of the alleged incident and there is nothing on record to show that matter had been reported to the police at any stage of time, therefore, the accused were rightly acquitted by the trial Magistrate.

After hearing the rival contentions, I find that those raised by learned counsel for the applicant are devoid of any merit. The judgment passed by the trial Magistrate is well reasoned one, based on proper appraisal of the evidence and correct interpretation of law. The trial Court has dealt with all the aspects of the case in a proper manner. In para No.13

referring to MLRs of accused Om Parkash Ex.R1 and that of accused Parveen Ex.R2, the Magistrate has observed that on 26.7.2009 at about 7:25 a.m. both the accused were present at General Hospital, Tohana and they were medico-legally examined at 7:40 a.m. and 7:50 a.m., respectively. It being so, it is highly unlikely that on 26.7.2009 at 7:25 a.m. in injured condition, they could have inflicted injuries to the complainant and his family members as claimed in the complaint, that falsifies the entire version of the complainant. There is reference to admission of PW1 in the cross-examination that on 26.7.2009, Om Parkash was medico-legally examined in General Hospital, Tohana.

Then no explanation for the delay of more than nine months in filing the complaint could be furnished by the complainant.

Further no broken household articles alleged to have been damaged by the accused during the incident were produced in the Court.

PW3 Dani Devi on medically examined was found to have simple injuries though she had stated that she was having grievous injuries and had been referred to Hisar where remained admitted for seven days without there being any record to support that contention.

Non-examination of independent witness Labh Singh and Balwan Sarpanch adversely affected the credibility of the case of complainant. Admission by PW1 in his cross-examination that complaint had been filed to create pressure upon Om Parkash etc. caused a dent in case of complainant, motive for filing the complaint was there on account of strained relations between the parties.

Thus there is no ground to grant special leave to appeal in this

case. The application is, therefore dismissed accordingly.

5.9.2017
Brij

(H.S. MADAAN)
JUDGE

- 1. Whether reportable? No /Yes
- 2. Whether speaking / reasoned? No / Yes