

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.12072 of 2017
and
Criminal Misc. No.A-689-MA of 2017

.....

Date of decision:27.10.2017

Bakhtawar Singh

...Applicant

v.

Paramjit Singh Sethi and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Vijay Rana, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.12072 of 2017:

For the reasons mentioned in the criminal miscellaneous application, the delay of 46 days in filing the criminal appeal along with application seeking leave to file appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-689-MA of 2017:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Paramjit Singh Sethi and others-respondents for grant of leave to appeal against the judgment dated 23.11.2016 passed by learned Judicial Magistrate Ist Class, Jalandhar, vide which the complaint filed under Sections 452, 380 and 427 IPC has been dismissed and the accused have been acquitted of the charges as framed

against them.

It has been mainly submitted in the application that the applicant is filing the accompanying criminal appeal against the judgment of acquittal which is likely to succeed as per grounds mentioned therein. It has been stated that dismissal of the complaint has caused a great loss to the rights of the applicant. It has been mentioned that the complaint was filed under Sections 447 and 427 IPC. It has, therefore, been prayed that this application seeking leave to file appeal be allowed and leave be granted to the applicant to file appeal.

I have heard learned counsel for the applicant and have gone through the record.

From the record, I find that Bakhtawar Singh-complainant filed complaint against Paramjit Singh Sethi, Narinder Singh and Smt. Sukhvinder Kaur under Sections 452, 380 and 427 IPC. The brief facts of the case as mentioned in the judgment dated 23.11.2016 passed by the learned Judicial Magistrate Ist Class, Jalandhar are as under:-

“Complainant filed the present complaint against the above named accused on the allegations that he has purchased the plot measuring 50' x 110' in the area of Village Khambra vide agreement dated 17.05.2007 executed by Sukhvinder Kaur and Rs.5,00,000/- in cash was received by Sukhvinder Kaur and her husband Narinder Singh from the complainant. It is averred that entire consideration against the delivery of possession of the above said plot was paid to the complainant. The said plot

is the ownership of Punjab Wakf Board and accused No.3 was lease holder of said plot. By virtue of said agreement dated 17.05.2007, the complainant was entitled to get the said plot transferred in his name from Punjab Wakf Board. Accordingly, the complainant submitted the relevant documents for transfer of lease deed in his favour and application was admitted by the board. The complainant after purchasing the plot from the accused No.2 and 3 constructed the boundary all. On 27.03.2009 at about 02.00 p.m. the complainant visited the plot and saw that one labour person was dismantling the walls of the said plot and the complainant asked him about the same, then he replied that he has been engaged on daily wages by one lady and two Sikh gentlemen. The complainant enquired the matter from nearby and met Amrit Pal Singh son of Surinder Singh son of Joginder Singh, Mohalla Ajit Nagar, Jalandhar and Hussan Lal son of Jagat Ram, c/o National Property Linker near Rattan Mani Dhaba, Nakodar Road, Jalandhar, all these person told the complainant that a lady and two Sikh gentlemen came in Santro car bearing registration No.PB-08-AS-4564 at about 10.30 a.m. and stopped the car in your (complainant) plot. All the said persons were standing inside the plot in question and they asked the accused. All the said persons were standing inside the plot in question and they asked the accused persons that the plot is the ownership of the complainant, the

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accused disclosed their identities and proclaimed that they are going to take forcible possession of the plot in question. Therefore they engaged the said labourer to demolish the boundary walls. In short, the complainant stated that the police recorded DDR No.12 dated 10.04.2009 under Section 427 IPC and suggested him to file a private complaint in the Court on the basis of said DDR. Now the complainant alleges that the offences under Sections 452, 380 and 427 of Indian Penal Code are made out. Hence the present complaint.”

The complainant in pre-charge evidence examined himself as CW-1 and examined Hussan Lal as CW-2 and Constable Kuldeep Singh as CW-3 and closed the pre-charge evidence.

On presentation of challan, the trial Court finding *prima facie* case against the accused framed charges for the offences punishable under Section 447 and 427 IPC, to which they pleaded not guilty and claimed trial.

After hearing learned counsel for the parties as well as going through the record, the trial Court acquitted the accused vide judgment dated 23.4.2016.

I have gone through the judgment passed by the learned Judicial Magistrate Ist Class, Jalandhar. The judgment has been passed after appreciating the evidence in right perspective. In no way, the findings can be held as perverse or against the law. Nothing has been pointed out as to which material evidence has been misread by the Court below and as to which material evidence has not been considered by the Court below. As

per the complaint, on 27.3.2009 at about 2.00 p.m. the complainant visited the plot and saw that one labour person was dismantling the walls of the said plot and the complainant asked him about the same and then he replied that he had been engaged on daily wages by one lady and two Sikh gentlemen. The complainant enquired the matter from nearby and met Amrit Pal Singh and Hussan Lal. Both these persons told the complainant that a lady and two Sikh gentlemen came in Santro car and stopped the car inside the plot in question and they asked the accused persons that the plot was the ownership of the complainant. The accused disclosed their identities and proclaimed that they are going to take forcible possession of the plot in question. Therefore, they engaged the said labourer to demolish the boundary walls, which means that these accused persons Paramjit Singh Sethi, Narinder Singh and Smt. Sukhvinder Kaur were not dismantling the walls of the said plot. The complainant has also not seen these three persons committing the trespass in the property in dispute. The labourer, who was there in the plot and demolishing the wall has neither been an accused nor a witness. All these persons, the complainant, the labourer and other two persons having disclosed the names of the accused. The charges are only for the offences under Sections 447 and 427 IPC. CW-2 Hussan Lal, who stated in his evidence that in the month of March 2009, he along with Surinder Singh, Amritpal Singh and Viridi were going to show a plot to some customer when on the way they saw that some people were demolishing the boundary wall of the property in dispute. Complainant-Bakhtawar Singh is known to him and he informed Bakhtawar Singh on

phone regarding demolishing of boundary wall. Thereafter they had gone to show the plot to his customer. One of them, namely, Surinder Singh knew the identity of said people, who were demolishing the boundary wall and he had talked with them, which means that though Hussan Lal was not knowing the accused persons, who were there, Surinder Singh, who knew the identity and talked with the those persons have not been examined. The Court below while discussing all these facts and evidence on record acquitted the accused.

The findings, in no way, can be held as perverse or against the evidence. Rather, the findings are correct are as per evidence and law. The accused have been rightly acquitted by the Court below.

In view of the above discussion, I do not find any ground to grant leave to file appeal. Therefore, finding no merit in the criminal miscellaneous application filed under Section 378(4) Cr.P.C. seeking leave to appeal, the same is dismissed.

October 27, 2017.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No