

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-704-MA of 2015

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Date of decision:7.2.2017

Manoj Kumar

...Applicant

v.

Charan Dass and others

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. R.N. Lohan, Advocate for the applicant.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Charan Dass and others-respondents seeking grant of leave to file appeal against the impugned judgment dated 10.2.2015 passed by learned Chief Judicial Magistrate, Hisar, vide which the complaint filed under Sections 342, 365 and 506 IPC has been dismissed and the accused have been acquitted after extending the benefit of doubt.

It is mainly stated in the application that a detailed appeal is being filed by the applicant/appellant in this Court and the same is likely to be allowed on the grounds taken therein. The grounds of appeal may also be read as part of this application. It has been stated that the findings of the learned Chief Judicial Magistrate, Hisar, acquitting the respondents are

based on surmises and conjectures and are contrary to the law and evidence on the file. That the grounds taken in the appeal are sufficient for conviction of the respondents. It has been prayed that this application be allowed and the applicant be permitted to file the appeal.

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

From the record, I find that Manoj Kumar-complainant filed complaint under Sections 342, 365 and 506 IPC against Charan Dass, Ishwar Chand and Vikas. The brief facts of the case as noted down by the learned Chief Judicial Magistrate, Hisar, in the judgment dated 10.2.2015 are as under:-

“The brief facts of the present complaint are that the complainant is residing in the Kathmandi, Hisar and is doing his business there, whereas shops of all the accused are also adjacent to his shop. On 17.11.2009, the complainant came to know that accused are bent upon to raise construction of a wall between his shop and their shop. On the same day, at about 10.00 A.M., when the complainant was in a bid to come in the court, all the accused forcibly entered in his shop and pointed out pistol upon him and wrongly confined him in the shop and locked the shop from outside. The accused also threatened to kill him in case he raised noise. He (complainant) remained confined in shop till 4.00 p.m. The matter came into the notice of his son Vivek. Vivek alongwith two known persons came to

the shop at 2.30/3.00 p.m. and tried to pacify the matter but in vain. The matter was reported to the police but in vain. Hence, the present complaint.”

The complainant examined himself as PW-1 and deposed as per his case. He also examined PW-2 Surjit Singh and PW-3 Anil. The accused also examined DW-1 Anil, DW-2 LC Saroj and DW-3 ASI Dharampal. The learned Chief Judicial Magistrate, Hisar, after discussing the evidence acquitted the accused.

I have gone through the judgment passed by the Court below. I find that the judgment has been passed while appreciating the evidence in right perspective. Nothing has been pointed out as to which material evidence has been misread by the Court below and nothing has been pointed out as to which material evidence has not been considered by the Court below. Nothing has been pointed out as to how the findings given by the learned trial Court are perverse or against the evidence or law. A perusal of the judgment shows that the complainant sent the telegram and on the basis of the telegram, the Police conducted the inquiry and found the version of the complainant as false. The accused had produced documents Exs.D.1 to D.12 after taking permission of leading secondary evidence. Even the complainant admitted his signatures on Ex.D.1 at Point-A which is his statement recorded by the Police. The complainant in cross-examination has also admitted that the Police during the enquiry had recorded the statements of Anil Kumar, Ram Lal, Subhash, Charan Dass, Vikas, Mahabir and himself as well. In these statements Ex.D.1, the complainant nowhere

alleged that he was wrongfully confined by the accused persons on gun point or that he was threatened by the accused persons in order to achieve their object of constructing the wall. The enquiry report Ex.D.11/Ex.D.12 further shows that the allegations levelled by the complainant were found false by the Police. This fact has been further supported by ASI Dharam Pal in his testimony before the Court as DW-3. Witness Anil Kumar, whose statement has been recorded in enquiry proceeding, has been placed on record as Ex.D.1 and he also appeared in the Court as DW-1. Further the learned Chief Judicial Magistrate, Hisar, discussed the evidence produced before the Court and found material discrepancies in the statements of the PWs. As per version of the complainant, he was kept confined in a room in the shop and the shop was locked from the outside whereas PW-2 stated that complainant-Manoj Kumar was made to sit in a room and they were standing in the room. The Court below held that this discrepancy creates a reasonable doubt and also amounts to contradictory version given by PW-1 and PW-2. The Court below also discussed other discrepancy regarding the scuffle whether it took place or not and further if the son of the complainant came to know that his father was illegally confined, why the matter was not reported immediately to the Police or to any other person. The Court below also noted the fact that the complainant in cross-examination stated that he does not want to disclose even the names of the persons who were present in the Panchayat/meeting held on 16.11.2009. A perusal of the findings given by the Court below shows that these have been given as per evidence and law. The evidence has been appreciated in right perspective. The

findings are correct as per evidence and law and do not require any interference from this Court.

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.

February 7, 2017.

(Inderjit Singh)
Judge

hsp

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