

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.A-761-MA of 2017 (O&M)

Date of Decision: 13.07.2017

State of Haryana

...Applicant-Appellant(s)

Versus

Dharam Singh & others

...Respondent(s)

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

Present:- Mr. Manish Bansal, DAG, Haryana
for the applicant.

HARI PAL VERMA, J.

CRM No.13203-2017:

Prayer in this application filed under Section 5 of the Limitation Act read with Section 482 CrPC is for condonation of delay of 225 days in filing the present application seeking leave to appeal.

The respondents-accused were acquitted by learned Additional Sessions Judge, Kurukshetra vide judgment dated 23.5.2016, whereas the present application seeking leave to appeal against their acquittal has been filed on 23.12.2016 i.e. after a delay of 225 days. In the application, it has been pleaded that after obtaining certified copy of the impugned judgment, the Public Prosecutor had sent his comments to the District Magistrate, Kurukshetra, on 6.6.2016, to file appeal in the High Court. The District Magistrate, after considering the opinion of the District Attorney/Public

Prosecutor and perusing all other documents had sent the same to the Advocate General, Haryana on 26.7.2016. Thereafter, the matter was put up before the Law Officer for opinion and the same was approved, so as to file leave to appeal against acquittal. After completion of certain other official formalities, the present application for leave to appeal was filed.

I have heard learned counsel for the applicant and perused the impugned judgment.

Admittedly, the District Magistrate, Kurukshetra has submitted the papers on 26.7.2016 and the said proposal was duly received by the office of Advocate General, Haryana, but still, the present application for leave to appeal has been filed on 23.12.2016. There is no plausible explanation to condone the aforesaid delay except the procedural one. Therefore, the application for condonation of delay is dismissed, as the same does not meet the requirements of 'sufficient cause', as defined under Section 5 of the Limitation Act.

Criminal Misc. No.A-761-MA of 2017

To be fair with the applicant-appellant, I have heard learned counsel for the applicant, on merits, as well and perused the impugned judgment dated 23.5.2016 passed by the Court below whereby the accused were acquitted.

This is an application filed under Section 378(3) CrPC seeking permission to grant leave to appeal against the judgment of acquittal dated 23.5.2016 passed by learned Additional Sessions Judge, Kurukshetra, whereby the respondents-accused are acquitted of the charge framed against them for the offences punishable under Sections 148, 323, 506 read

with Section 149 IPC and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, “the SC/ST Act”).

Briefly stated, it is the case of the prosecution that on 16.6.2013, complainant Kura Ram, who was a worshipper of ‘Googa Mari’, after purchasing ‘Biri’ and match box from the shop of Bablu, was going to his house. After reaching at ‘Googa Mari’, when he was going inside ‘Googa Mari’; Dharam Singh Fauji, his son Harpal Singh, Deepu, his father Karam Singh, Sandeep son of Dharam Singh, Tarsem, Kalam sons of Maya Ram and Maya Ram son of Puran Singh were affixing posters of ‘Googa Peer’ with a small hammer and nails. When complainant told them that the wall of ‘Googa Mari’ was constructed with the help of four inch bricks and same could fall with the small hammer, Dharam Singh and his companions (accused) called the complainant “*Chuhra*”, “*Jallad*”, “latrine cleaner” and asked him as to how he had entered the ‘*Googa Mari*’, to which the complainant replied that he was the worshipper of ‘*Googa Mari*’ since beginning. Hearing this from the complainant, Dharam Singh caught hold of the complainant, whereas, Harpal gave a brick blow on the head of the complainant and Deepu, Sandeep and Karam Singh gave *danda* blows on his back and chest whereas Tarsem, Kamal and Maya Ram hit the complainant on the left hand and back with the help of *dandas* and caused injuries. Tarsem also pressed the neck of the complainant. However, when the complainant raised an alarm, it attracted Amar Singh, Barkha Ram and Jai Pal residents of Village Sunaria. On seeing them, Dharam Singh and his companions ran away from the spot along with their weapons. But while leaving the spot, they threatened the complainant that

if again, an opportunity comes, the complainant would be done to death. Complainant went to his house, from where, his son Jai Bhagwan took him to CHC Shahbad.

On the basis of the statement made by the complainant, FIR Ex.P4 was registered. After completion of necessary investigation, challan was presented and accused were chargesheeted for the commission of offence under Sections 148, 323, 506 read with Section 149 IPC and Section 3 of the SC/ST Act, to which, they pleaded not guilty and claimed trial.

PW-1 Kura Ram, who is the complainant in the present case, stated that the accused Dharam Singh had caught hold of him and dragged him outside the 'Googa Mari' and Harpal assaulted him with a brick on the right side of his head and called him "Chuhra, Jallad, latrine saff karne wala" and also threatened him against entering the 'Googa Mari'. All the accused attributed such remarks to him. Accused Tarsem throttled the complainant whereas accused Maya Ram, Karmu, Kamal, Sandeep and Deepu attacked him with *danda* and *binda* on his back and chest.

PW-2 Amar Singh has stated that on the relevant date at about 2.00/2-30 pm, he heard the voice of '*mar diya mar diya*' coming from 'Googa Mari', on which, he reached at the 'Googa Mari', where he saw Maya Ram, Tarsem, Kamal, Fauji @ Dharam Singh, Harpal, Deepu, Karmu and Sandeep beating Kura Ram and when he objected to the act of the accused persons, they left the spot, but while leaving the spot, they threatened to kill Kura Ram in case he returned to 'Googa Mari' in future.

PW-7 Dr. Arvind Kumar has tendered into evidence his affidavit Ex.P11 and stated that he has medico-legally examined Kura Ram on 16.6.2013 at 4-15 P.M. He had sent ruqa Ex.P13 to the police, noting the following injuries:-

- “1. Lacerated wound of .5 x .5 cm size muscle deep over left front region of head. X-ray advised.*
- 2. Redish dis-colouration with pain over upper back.*
- 3. Bluish redish colouration below and lateral to right eye.*
- 4. Pain and swelling left chest.*
- 5. Bluish redish dis-colouration B/L side of neck.”*

The trial Court after going through the case and appreciating the evidence, found that the investigating officer has clearly stated that there were Sarpanch, Numberdar and Member Panchayat in the village, but none of them has come forward and told the investigating officer about the occurrence. There is no other independent witness who has supported the case of the prosecution. No recovery of weapon used in the crime was effected. Even Jai Bhagwan, who is stated to have taken the injured-complainant to hospital, has not been cited as a witness. The prosecution has failed to prove that abusive language has ever been used against the complainant. The trial Court has further observed that the provisions of the Act are very stringent and have to be followed with utmost care and caution.

Learned counsel for the applicant-State has argued that PW-1 Kura Ram, complainant, has supported the prosecution version and the injuries, as referred by PW-7 Dr. Arvind Kumar, are sufficient to show that the complainant Kura Ram was injured at the hands of the accused. He has

further argued that the trial Court has gravely erred in not appreciating the evidence on record and injuries caused to the complainant. The accused have uttered derogatory words against the complainant who is a member of Scheduled Caste community.

On the day of alleged occurrence i.e. 16.6.2013, the complainant was coming to his house and had stopped near the *Googa Mari* on hearing the noise of hammer. On enquiring, he saw that the accused-respondents were fixing some posters. He stopped them from doing so, as the wall was very weak, but they caught hold of him and caused injuries to him. He has alleged that he was dragged outside the *Googa Mari*. He was attacked on the head and other parts of his body and was also abused. But learned trial Court found that there is no sufficient evidence in this regard. No medico-legal report, oral or documentary evidence has come on record to support the complainant's version.

As per the Investigating Officer, Sarpanch, Numberdar and Members Panchayat were present in the village, but none of them has come forward to support the case of the complainant. The weapons which were used in the occurrence were never produced. No independent witness has been examined by the complainant/prosecution. Jai Bhagwan, who is stated to have taken the injured to hospital, has not been cited or examined as a witness, which doubts the case of the prosecution. It has come in evidence that a case was registered against the brother of the accused and some other persons and they were convicted. The father of the complainant and his brother were also sentenced in a case under Sections 148, 307 IPC read with Section 149, 323 IPC read with Section 149 and 325 IPC read with

Section 149 IPC. The applicant was in the habit of making false complaints against the villagers in order to take charge of the *Googa Mari*. He had also entered into a compromise dated 5.6.2013 (Mark DA) much before the alleged occurrence. In these circumstances, when the occurrence is not proved by the prosecution beyond reasonable doubt, the respondents-accused cannot be held guilty for causing injuries to the complainant. Thus, charge under Sections 148, 323, 506 read with Section 149 IPC were not proved against the respondents-accused.

So far as offence under Section 3 of the SC/ST Act is concerned, it has certain ingredients to be fulfilled i.e. abusive language should have been used against the complainant, who is a member of Scheduled Caste community and the accused must know that he (complainant) is a member such community. Further, such words must be uttered at a public place. The trial Court has tested the requirement of aforesaid provisions. Mere accusation of chiding a member of SC/ST community by his caste name would not suffice to constitute an offence under the SC/ST Act, unless it has been made to undermine the dignity of a member of the said category and at a place in full public view. In the case in hand, no such independent witness, who could prove such allegations made by the complainant except the complainant himself and PW-12 who is his brother, has been examined. The only independent witness PW-2 Amar Singh has denied that any such caste based remarks were ever made in his presence. Similarly, Jai Bhagwan, who is stated to have taken the injured-complainant to hospital and was the relevant witness, has not been

examined by the prosecution, which falsify the very case of the prosecution.

Thus, no interference is warranted in the impugned order. Accordingly, finding no merit in the contention of the learned counsel for the applicant, the prayer made in the present application under Section 378 (3) Cr.P.C. for leave to appeal is declined.

The application is dismissed.

July 13, 2017
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No