

CRM-A-951-MA-2014 (O & M)

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

CRM-A-951-MA-2014 (O & M)

Date of Decision: 05.04.2017

Bikramjit Singh

... Applicant

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. S.K.Daaria, Advocate,
for the applicant.

INDERJIT SINGH, J.

CRM-18552-2014

This is an application seeking condonation of delay of 183 days
in filing the application for leave to appeal.

Heard.

For the reasons mentioned in the application, the same is
allowed. Delay of 183 days in filing the application seeking leave to appeal,
is condoned.

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Applicant-Bikramjit Singh has filed this application under
Section 378 (4) of the Code of Criminal Procedure, 1973 (for brevity,
'Cr.P.C.') seeking permission for leave to appeal against respondents-State of
Punjab and others, challenging the impugned judgment dated 23.07.2013

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passed by learned Judicial Magistrate Ist Class, Patti, in criminal complaint No.30 of 13.01.2009, titled as 'Bikramjit Singh vs. Hardev Singh and others', filed under Sections 326, 324, 323, 34 and 506 of the Indian Penal Code (for brevity, 'IPC') vide which respondents Nos.2 to 4-accused were acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is further stated that the impugned judgment passed by learned Judicial Magistrate Ist Class, Patti, acquitting respondent Nos.2 to 4 under Sections 326, 324 and 34 IPC, suffers from illegality and irregularity and thus the same deserves to be set aside. It is, therefore, prayed that leave to appeal be granted.

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

From the record, I find that the applicant filed a complaint against Hardev Singh, Shindo, Gurmit Kaur @ Neetu and Bansi, under Sections 326, 324, 323, 34 and 506 IPC. The brief facts of the case, as noted down in the impugned judgment passed by learned Judicial Magistrate Ist Class, Patti are as under:

“2. The brief allegations of the complaint are that the sister of the complainant is married with Rasal Singh of village Chuslewar. It is further averred that he had gone to meet her but his sister has gone to some relative and therefore, he stayed in the house of his sister. It is further averred that his niece namely Kirandeep Kaur was in the house. It is further averred that accused Hardev Singh,

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who is nephew of Rasal Singh, was having some dispute between them. It is further averred that said Hardev Singh used to abuse Rasal Singh. It is further averred that at about 7.00 p.m. on 01.12.2008, complainant was present in the house of Rasal Singh, then Hardev Singh with kirpan, Gurmit Kaur with Kopa (datri Type), Shindo with dang and Bansi empty handed came in front of the house and began to abuse. It is further averred that at that time, a bulb was lightening up the lobby as well as place outside the door. It is further averred that Rasal Singh requested with folded hands that they should not do so as his relatives have come. It is further averred that Bansi raised lalkara to catch hold of complainant and he should be taught lesson for getting Hardev Singh medically examined. It is further averred that then Hardev Singh gave kirpan blow, which landed on the left arm of the complainant, then Gurmit Kaur gave a kopa blow, which landed on the smallest finger of the left hand of the complainant, then Shindo gave a dang blow which landed on the left thigh of the complainant. It is further averred that all the accused fled away from the spot alongwith their respective weapons after threatening them. It is further alleged that matter was reported to police, but police has not taken any action against the accused. Hence, the present complaint is filed.”

Respondent Nos.2 to 4 were summoned by the trial court to face trial under Sections 323/324/326/506/34 IPC, however, accused Bansi was not summoned. Thereafter, on finding a *prima facie* case against respondent Nos.2 to 4 under Sections 326, 324 and 34 IPC, they were

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charge-sheeted accordingly, to which they pleaded not guilty and claimed trial.

Learned Judicial Magistrate Ist Class, Patti, after appreciating the evidence, acquitted respondent Nos.2 to 4-accused vide impugned judgment dated 23.07.2013.

Feeling aggrieved from the impugned judgment dated 23.07.2013, instant application seeking leave to appeal has been filed.

From the record, I find that first of all, the occurrence took place at about 7.00 P.M. on 01.12.2008 and the complaint was filed on 13.01.2009 i.e. after a delay of 43 days. There is nothing on record to prove that the present complainant approached the police for registration of FIR etc. This long delay in filing the complaint creates a reasonable doubt in the version of complainant. Secondly, it is in the statement of CW 1 Dr. S.S.Sandhu that he medico-legally examined the injured on 04.12.2008 which means that the complainant did not get the treatment for three days qua his injuries stated to be caused with sharp edged weapon including the grievous injury, which further creates a reasonable doubt in the complainant's version. Next, I find that no X-ray film or X-ray report has been proved, therefore, grievous injury under Section 326 IPC is otherwise not proved on record. The injuries found on the person of complainant by the doctor are as under:

- (i) *An incised wound 1 x 0.2 cm transverse from back of distal phalanx of little finger of left hand and wound was muscle deep.*
- (ii) *An incised wound 5.5 x 1 cm transverse on back left forearm 4 cm below elbow joint and wound was bone*

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deep. Serum present in the wound and X-ray advised.

(iii) A brownish contusion 6 x 2 cm oblique on back and lateral part of right thigh, upper part.”

Perusal of these injuries shows that injury No.3 was only brownish contusion whereas injury No.1 was on the little finger of left hand and injury No.2 was stated to be below the elbow joint and wound was bone deep. But it is not explained as to why the complainant get himself medico-legally examined after three days of receiving the injuries. Furthermore, during the cross-examination, CW 2 Rasal Singh admitted that FIR No.231/12 has been registered against him for causing injuries on the person of Fauja Singh. He admitted that his son, his wife and his daughter are also accused in that case. This fact has also been concealed in the complaint and can be held as a motive to file the complaint. The complainant himself admitted that his medical was got conducted after 04 days and he did not get any medical aid during the aforesaid period.

From the impugned judgment, I find that the findings have been given by learned Magistrate after appreciating the evidence in minute details and in right perspective. In no way, the findings can be held as perverse or against the evidence. At the time of arguments, nothing has been pointed out as to how the findings given by learned trial Court are perverse or against the evidence. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the learned Court below.

From the above discussion, I find that findings given by the trial Court are correct, as per evidence and law and, therefore, the same do

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not require any interference.

Therefore, finding no merit in the present application under
Section 378 (4) Cr.P.C., the same is dismissed.

05.04.2017
parveen kumar

(INDERJIT SINGH)
JUDGE

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