

**CRM No.1349 of 2016 in/and
CRA No.S-1043-SB of 2015 (O&M)**

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

**CRM No.1349 of 2016 in/and
CRA No.S-1043-SB of 2015 (O&M)
Date of decision: October 09, 2018**

Kuldeep Singh

...Applicant-Appellant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Satwant Mehta Advocate
for the applicant-appellant.

Mr.Pawan Sharda, Sr.DAG, Punjab
for the respondent-State.

Mr.D.S.Kahlon, Advocate,
for respondent No.5.

INDERJIT SINGH, J.

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Applicant Kuldeep Singh has filed this application under Section 378(3) Cr.P.C. seeking leave to file an appeal against State of Punjab and other respondents, challenging the judgment dated 12.12.2014 passed by learned Addl. Sessions Judge, Amritsar, whereby respondents No.2 to 10 were acquitted of the charges framed against them.

It is mainly stated in this application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is, therefore, prayed that leave to appeal be granted.

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From the record, I find that challan was presented against accused Parminder Singh, Kalu, Sahib Singh, Resham Singh, Bachan Singh, Subegh Singh, Shiv Singh, Balwinder Singh and Rachhpal Singh in case FIR No.135 dated 29.10.2012, under Sections 445(3), 446, 450, 379, 148, 149 IPC and Sections 25 and 27 of the Arms Act by the police of Police Station Gharinda. The brief facts of the case as noted down in the judgment passed by learned Addl. Sessions Judge, Amritsar, are as under:-

“2. Prosecution case is registered at the instance of Kuldip Singh son of Bachan Singh, resident of village Dhanoe Kalan, Police Station Gharinda, aged 50 years. In his statement recorded with police on 29.10.2012, he stated that they are three brothers namely Ajit Singh, Avtar Singh and he himself. In the year 1994, they had purchased 18 Marlas of land from Smt. Sukhwinder Kaur, which was situated towards the northern side on the Phirni of their village and they had constructed their houses and were residing there.

About one/two years prior to occurrence, they had locked their aforesaid houses and started residing in Farm House.

On 13.10.2012 at about 10.00/11.00 P.M., one Tasvir Singh disclosed them that Shiv Singh son of Kartar Singh having rifle alongwith his son Balwinder Singh having pistol, Resham Singh having kirpan, Parminder Singh son of Balwinder Singh having dang, Bachan Singh having Sabbal, Sahib Singh having Kahi, Sukhdev Singh, Kalu Singh sons of Sahib Singh having dang, Rachhpal Singh son of Kabal, Subegh Singh son of Makhan Singh, all residents of Dhanoe Kalan in connivance with each other had entered in their house, which they had locked and after demolishing the wall of the house, they were stealing the brickbats and Shiv Singh is raising Lalkara that whosoever would come, he would be taught a lesson.

On receiving this information, he alongwith his brother Ajit Singh went there and seen the occurrence by concealing their presence from the other side of the wall. Shiv Singh as well as other accused had demolished the wall adjoining the Orchard and also took away with them the

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brickbats. He further stated that due to fear, he as well as his brother Ajit Singh did not come forward. He further stated that earlier the matter was not reported to the police as move was going on for compromise. On the basis of this statement Ex.PW8/1, after recording police proceedings Ex.PW8/2, a Ruqa was sent, on the basis of which FIR Ex.PW8/3 was registered against the accused.

Investigation of the case was started. SI Ravinderpal, Investigating Officer went to spot, prepared the site plan of the occurrence. During investigation, the accused were arrested and they got recovered Sabbal Loha, Kirpan and other weapons. Khaka of the same were prepared and those were taken into possession vide separate recovery memo. Then statements of witnesses were recorded. Then after completion of investigation, the challan against the accused was presented in the Court of Sh. Amardeep Singh, learned Judicial Magistrate Ist Class, Amritsar, who after supplying the copies of the challan to the accused in terms of provisions of Section 207 Cr.P.C, vide commitment order dated 6.11.2013, committed the case to the Court of learned Sessions Judge, Amritsar, for appearance on 18.11.2013, which was entrusted to this Court.”

On presentation of challan against accused-respondents, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused were charge-sheeted under Sections 148, 445, 446, 450 read with Section 149 IPC and Section 25 of the Arms Act, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Kuldeep Singh, complainant, PW-2 Ajit Singh, PW-3 Tasvir Singh, PW-4 Head Constable Paramjit Singh, PW-5 ASI Prabhjit Singh, PW-6 Manmohan Singh, AIG, SSOC, Amritsar, PW-7 ASI Dilbagh Masih and PW-8 Head Constable Surjit Singh.

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At the close of prosecution evidence, the accused were examined under Section 313 Cr.P.C. and confronted with the evidence of the prosecution. They denied the correctness of the evidence and pleaded themselves as innocent. It is also stated by the accused that they have been falsely implicated in the present case at the instance of a local minister as they belong to Congress party and the complainant side belong to Akali party. No occurrence had taken place on 13.10.2012 during the night. However, no evidence in defence has been led by the accused.

Learned Addl. Sessions Judge, Amritsar, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 12.12.2014.

Aggrieved from the above-said judgment, appeal along with present application for grant of leave to appeal has been filed.

Lower court record was requisitioned.

I have heard learned counsel for the parties as well as learned State counsel and gone through the record.

From the record, I find that first of all, in the present case, the occurrence took place on 13.10.2012 whereas the FIR was registered on 29.10.2012. There is a long delay in getting the FIR registered, which creates a reasonable doubt in the present case as to whether the occurrence rightly took place as stated by the complainant. Further, I find that case of the complainant is that they have purchased 18 marlas of

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land from Smt. Sukhwinder Kaur, but she has not been examined in this case. Moreover, no copy of sale deed or document of title has been placed on record. When the complainant appeared in the witness-box, he stated in his cross-examination that they have constructed the house in khasra Nos.151 and 155, but no *jamabandi* or *khasra girdawari* has been produced on record to show the ownership or possession over the said khasra numbers. Even if it is taken that the complainant left this house one or two years prior to the occurrence and shifted to a farm house, even then prior to one or two years when the complainant was residing in this house, they might have voter-cards, ration-card, electricity connection or might be paying some *chulha*-tax etc. to the Gram Panchayat, but no such document has been placed on record to prove the existence and possession of the said house. There is no document on record to show the construction of house by producing any receipt/document regarding purchase of material etc. It is also in the cross-examination of the complainant that he had informed the police after 18 days of the occurrence.

Keeping in view all these facts, I find that a reasonable doubt exists in the prosecution version. Furthermore, no bricks have been recovered from the accused. No pistol or revolver has also been recovered. Accused-Shiv Singh had no licence for any weapon. One rifle is stated to be in the name of accused-Balwinder Singh which was already deposited by him in the police station prior to the occurrence.

Perusal of the findings given by learned trial Court shows that these have been given as per evidence and law. In no way, the

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findings can be held as perverse or against the evidence and law. At the time of arguments, nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the trial Court. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed while passing the impugned judgment. The findings have been given by correctly appreciating the evidence in right perspective and accused-respondents have been rightly acquitted.

In view of the above discussion, I find that the impugned judgment dated 12.12.2014 passed by learned Addl. Sessions Judge, Amritsar, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

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Since the application for grant of leave to appeal has been dismissed, as stated above as no ground is made out for grant of leave to appeal, consequently, the present appeal stands dismissed.

09.10.2018

parveen kumar

**(INDERJIT SINGH)
JUDGE**

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