

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

CRM No.A-498-MA of 2012 (O&M)

Date of decision: October 08, 2018

Totan @ Inderjit Kaur

...Applicant

Versus

Pargat Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.D.S.Malwai, Advocate for
Mr.K.B.Raheja, Advocate
for the applicant.

Mr.Ankush Singh, Advocate
for respondents No.1 to 4.

Ms.Monika Jalota, DAG, Punjab
for the respondent-State.

INDERJIT SINGH, J.

Applicant-Totan @ Inderjit Kaur has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Pargat Singh and other respondents, challenging the judgment dated 30.09.2011 passed by learned Special Judge, Barnala, whereby accused-respondents 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, therefore, prayed that leave to appeal be granted.

As per the record, complainant Totan @ Inderjit Kaur filed a

complaint against accused Pargat Singh, Hardev Singh, Harbans Singh and Hardeep Singh @ Kala under Sections 323, 354 IPC and Section 3 (1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [for brevity SC/ST Act). The brief averments of the complaint as noted down in the judgment passed by learned Special Judge, Barnala, are as under:-

“2. Briefly stated the allegations are that the complainant belongs to Ramdasia Sikh caste which has been declared as Schedule Caste by the Government and the accused No.1 to 4 who are Jat Sikh by caste were well within the knowledge that she belonged to Ramdasai Sikh caste, whereas, accused no.5 is posted as District Welfare Officer, Barnala. It is averred that the complainant had purchased a plot of six marla of the size 33' x 49'.6” belong 6/151 share out of 7 K 18 M of land and mutation has also been sanctioned in her favour. It is averred that in the month of March 2007, complainant alongwith her husband was raising construction of the house in the said plot and on 11.3.2007, accused no.1 to 4 made an attempt to interfere in the construction work of her house and they proclaimed that said land belonged to them and complainant could not raise any construction there on and it led to an altercation between her and accused no.1 to 4. It is averred that her husband Balwinder Singh came there from inside the house and asked accused no.1 to 4 that they had no right to stop complainant and him from constructing the house in the said property and at this accused Pargat Singh caught hold her husband Balwinder Singh by his neck and when the complainant came forward to save her husband, then accused no.1 to 4 also said to her “Kutya, Chura, Chuara, Bahrle Pind to Aa Ke Sade Te Tauns Jamandan Hai, Tuhanu Sarkar Ne Nokrian De Ke Sade Sir Chada Ditta Hai, Ate Mein Pind De Sarpanch Nu case Wich Fasaun Da Maja Chakonda Han” (You Churra, Chamar Dog coming from outside village from outside are trying to assert to our authority to us. The government has provided jobs to you putting in a better position than us and I will teach you a lesson for getting involved in a dispute with the village Sarpanch), but she did not stop and tried to save her husband from the clutches of accused. Accused Hardeep Singh @ Kala caught hold her from her arm and when she was struggling to free herself from accused Hardeep Singh @ Kala, then accused tore her shirt and also caught her breast and tried to outrage her modesty by making a kiss at her face and when she raised hue and cry, then Bant Singh son of Kartar Singh, Bhura Singh son of Babu Singh, Ajmer Singh son of Nand Singh alongwith other persons

came on the spot and saved complainant and her husband from the clutches of accused with great difficulty and on the next day, accused approached the complainant for compromise so she did not take any action against the accused. It is averred that thereafter gave false applications against complainant and her husband in the police and when she disclosed the real facts, the police failed to take any action against accused no.1 to 4, so she moved an application before Commission of Schedule Caste and Schedule Tribes Chandigarh and Human Rights Commission, Chandigarh on 30.4.2007 and said commission wrote SSP, Barnala to take action against accused no.1 to 4 and a direction was also issued to accused no.5 vide letter dated 5.6.2007, copy of which was also sent to complainant. It is further averred that SSP, Barnala, failed to take any action against the accused, but accused no.5 called the complainant and accused no.1 to 4 in his office 2/3 times and also recorded statements of complainant and her witnesses. It is alleged that on 10.9.2007, accused no.5 had called complainant and her witnesses alongwith accused no.1 to 4, where accused no.5 instead of hearing her, pressurizing her and her husband to effect a compromise with accused no.1 to 4 and when they refused to do so, accused no.5 abused and insulted them and there also accused no.1 to 4 called the complainant as “Kutya, Churya, Chuara, Bahrle Pind to Aa Ke Sade Te Tauns Jamandan Hai, Tuhanu Sarkar Ne Nokrian De Ke Sade Sir Chada Ditta Hai, Ate Mein Pind De Sarpanch Nu case Wich Fasaun Da Maja Chakonda Han” (You Chura, Chamar Dog coming from outside village from outside are trying to assert to our authority to us. The government has provided jobs to you putting in a better position than us and I will teach you a lesson for getting involved in a dispute with the village Sarpanch) and further stated that she could not do anything against them and they would teach her a lesson for making a complaint against them and they abused her husband with castic remarks and at that time people gathered at the spot and they were insulted intentionally in the presence of public by the name of their caste as it was well within their knowledge that the complainant belongs to Ramdasia Sikh Caste. The complainant reported the matter to police, but the police failed to take any action against. Hence, the present complaint.

Finding prima facie case, the accused were charge-sheeted under Sections 354, 323, 34 IPC and Section 3(1)(x) of the SC/ST Act, to which they pleaded not guilty and claimed trial.

The complainant examined herself as PW-1, PW-2 Bhura Singh

and PW-3 Balwinder Singh. At the close of complainant evidence, the accused were examined under Section 313 Cr.P.C. They were confronted with the evidence of the complainant and they denied all the incriminating evidence against them and pleaded their false implication. The accused tendered into evidence copy of plaint Ex.DH, copy of zimni order Ex.DJ and copy of preliminary statement of complainant Ex.DK.

Learned Special Judge, Barnala, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 30.09.2011.

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

Notice of the application was issued. Learned counsel for respondents No.1 to 4 as well as learned State counsel appeared and contested the application.

Lower Court record was also requisitioned.

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

The perusal of the findings given by learned trial Court shows that these have been given as per evidence and law. In no way, the 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 Court below. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned Court below.

It is proved on record that dispute is regarding shamlat property

of panchayat regarding which civil suit is already going on much before filing of the present complaint. The case of the accused is that present complaint has been filed to put pressure upon the accused. Accused Pargat Singh is stated to be son of Ex-Sarpanch and one of the accused is Member Panchayat. The occurrence took place on 11.03.2007 but the complaint was filed on 12.09.2007, which means that there is delay of six months in filing the complaint and this delay has not been explained by the complainant. Furthermore, no doctor has been examined to prove the injuries nor there is any evidence that complainant side got themselves medico legally examined regarding the injuries.

Further, I find that it is admitted that an application dated 15.03.2007 was moved by Balwinder Singh, husband of present complainant to SSP, Barnala, against the accused regarding the occurrence. Learned trial Court held that the perusal of the application shows that there is no mention of any occurrence that accused had abused and intimidated the complainant by making caste remarks and that application belies the version of the complainant regarding the alleged occurrence. The application Ex.DB was moved by Balwinder Singh, husband of the complainant, who was working as SPO, Punjab Police. In that application, nothing has been mentioned by Balwinder Singh regarding causing injury and abused with caste remarks or having tried to outrage the modesty of his wife Totan @ Inderjit Kaur. The Court further held that even PW-2 Bhura Singh is also silent about any act on the part of the accused to outrage of modesty of present complainant. The version given in Ex.DB is first version from the complainant side but as discussed, the main allegations are

of complainant Ex.DC was recorded under her signatures and it is found that no such occurrence ever took place and complaint has been filed just to grab the land of the shed. Another complaint was filed by complainant to Punjab State Scheduled Commission, Chandigarh Ex.P6, on which, SSO, Barnala was asked to enquire into the matter and even in that enquiry, it was reported vide Ex.DG that the complaint has been lodged to grab the panchayat land and was found to be false and frivolous. Even in the civil suit which was filed after the occurrence on 28.03.2007, there was no mention regarding alleged occurrence.

In view of the fact that in the applications, which are given immediately to SSP, there is no mention of such type of occurrence and there is material improvements in the version of the complainant, I find that reasonable doubt exists in the complainant version.

From the perusal of the judgment passed by the Court below, I find that the findings have been given by correctly appreciating the evidence in right perspective and accused-respondents have been rightly acquitted. In no way, the judgment can be held as perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 30.09.2011 passed by learned Special Judge, Barnala, 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.

October 08, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No