

In the High Court of Punjab and Haryana at Chandigarh

.....
Criminal Misc. No.A-1135-MA of 2017

.....
Date of decision:26.9.2018

Kishan Lal alias Kishan Chand

...Applicant

v.

State of Haryana and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Manoj Kaushik, Advocate for the applicant.

Mr. B.S. Virk, Deputy Advocate General, Haryana
for the respondent No.1-State.

Mr. Kartar Singh, Advocate for respondents No.2 to 4 and 6.

Respondent No.5 already died.

Mr. H.C. Walia, Advocate for Mr. Shiv Kumar, Advocate
for respondent No.7.

.....

Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against State of Haryana and others-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 17.2.2017 passed by learned Judicial Magistrate Ist Class, Faridabad, whereby the complaint filed under Sections 148, 149, 323, 452 and 506 IPC has been dismissed and accused-respondents No.2 to 7 have been acquitted of the charges as framed against them.

It has been mainly stated in the application that the accompanying appeal is being filed against the impugned judgment dated

17.2.2017 passed by learned Judicial Magistrate Ist Class, Faridabad, which is likely to succeed on the grounds mentioned therein. It has been stated that the learned Court below has erroneously acquitted the accused. It has, therefore, been prayed that this application be allowed and leave be granted to the applicant to file appeal.

From the record, I find that Kishan Lal alias Kishan Chand-complainant filed complaint against Hira Lal, Kewal, Ramesh, Jai Chand, Smt. Chunna and Smt. Machhla for the offences under Sections 148, 149, 323, 452 and 506 IPC. The brief facts of the case as noted down by learned Judicial Magistrate Ist Class, Faridabad, in his judgment dated 17.2.2017 are as under:-

“The brief facts as borne out of the complaint are that there was a civil dispute between the accused persons and the complainant. The accused No.4 has filed a suit No. 360 of 2008 for permanent injunction against the complainant and his brother Hoti Lal @ Het Ram in which the stay application filed by the accused No.4 was dismissed by the Court of Sh. on 26.08.2008. It is stated that regarding that suit property, a civil appeal was pending before the Court of Sh. R.K. Sharma, ADJ, Faridabad. It is averred that the accused No.1 to 6 are having enmity with the complainant and his family members due to civil dispute and they intend to grab his share. On 25.09.2009 at about 8/8:15 AM when the complainant and his wife Smt. Kamla along with a mason were raising construction in their

shops on their share, the accused No.1 to 6 with common intention and common object, armed with lathis and dandas entered in the shop of the complainant and tried to stop the construction. Accused No.1 to 4 inflicted injuries upon the complainant with their respective weapons. The accused No.1 gave a lathi blow on the left shoulder of the complainant and the accused No.2 to 4 gave kick and fist blows to the complainant. The accused No.2 gave a fist blow on the left side of chest of the complainant and the accused No.4 gave a lathi blow (Hodda) on the left side of jaw of the complainant and the accused No.3 gave a kick and fist blow to the complainant and when Smt. Kamla w/o the complainant tried to rescue the complainant then the accused No.6 gave a brick bat injury over her forehead. It is mentioned that the accused No.5 gave a danda blow on the left shoulder of Smt. Kamla and the accused No.4 & 5 also gave danda blow on her right thigh and back. It is stated that the accused No.2 gave a fist blow over her nose. On hearing the noise of quarrel Hoti Lal and Ajeet came at the place of occurrence and saved the complainant and his wife from the clutches of the accused persons. All the accused No.1 to 6 ran away from the place of occurrence with their respective weapons after threatening complainant and his wife of dire consequences. The complainant approached the police several times to get the case registered against the accused persons but

to no avail and, therefore, the present complaint.”

The complainant examined in after charge evidence Heera Lal as CW-1, his wife Kamla as CW-2, Bachha Narayan as CW-3, Record Keeper, GH Ballabgarh, who had brought the summoned medical record of the complainant and his wife as the doctor, who had medico-legally examined the injured had left the job and was not traceable. He deposed regarding their MLRs.

At the close of the complainant's evidence, the statements of the accused were recorded under Section 313 Cr.P.C. and all the incriminating materials were put to them, but they denied the correctness of the same and claimed that the case was false and they had been implicated just to put pressure for compromise in the state case pending against complainant side. In defence evidence documents Ex.D.1 to D.6 (certified copies of MLRs, evidence of doctor and record keeper and charge-sheet of case title State versus Kishan Lal and another) were tendered.

After appreciating the evidence, the accused were acquitted by the learned Judicial Magistrate Ist Class, Faridabad, vide judgment dated 17.2.2017. Aggrieved from this judgment of acquittal, the present appeal along with application seeking leave to appeal has been filed by the complainant.

Notice of the application for condonation of delay was issued.

Mr. B.S. Virk, learned Deputy Advocate General, Haryana has appeared on behalf of the respondent No.1-State, Mr. Kartar Singh, learned Advocate has appeared for respondents No.2 to 4 and 6 and Mr. H.C. Walia,

learned Advocate appearing for Mr. Shiv Kumar, learned Advocate has appeared for respondent No.7 and contested this application.

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

From the record, I find that first of all the occurrence took place in the present case as per the complainant on 25.9.2009 and the complaint was filed on 27.10.2009 i.e. after more than one month and this delay has not been explained. Secondly, it is proved on the record that FIR had been registered against the complainant side, but there is no such mention regarding that occurrence. The accused had also suffered the injuries but these injuries have not been explained in the present case which means the genesis of the occurrence have been concealed by the complainant and the occurrence has not taken place as stated by the complainant. The complainant had concealed the material facts from the Court. As the injuries have not been explained on the person of the accused and the genesis of the occurrence have been concealed and further there is delay of more than one month in filing the complaint and it being cross-version complaint and further in view of the injuries as mentioned in the judgment itself, where mostly injuries were complaint of pain and there was no visible mark injury on the person of the complainant and his wife Kamla, I find that the complainant has failed to prove his case beyond a shadow of reasonable doubt.

The findings have been given by the Court below as per evidence and law. In now way, the findings can be held as perverse or

against the evidence. Nothing has been pointed out as to which material evidence has been misread by the Court below and which material evidence has not been considered by the Court below.

The learned trial Court after appreciating the evidence has rightly acquitted the accused. The findings have been given by the Court below after appreciating the evidence in right and proper perspective which are as per evidence and law and the same do not require any interference from this Court and the same are upheld.

From the above, 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 file appeal, the same is dismissed.

September 26, 2018.

(Inderjit Singh)
Judge

hsp

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