

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

CRM-A-1326-MA of 2017.
Decided on:-October 03, 2018.

Gurmail Kaur.

.....Applicant.

Versus

Chaman Lal Bhatia and another

.....Respondents.

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

Present:- Mr. Sarwinder Goyal, Advocate
 for the applicant.

HARI PAL VERMA, J.

The applicant-complainant has filed the present application under Section 378(4) of the Code of Criminal Procedure for grant of leave to appeal against the judgment dated 21.03.2017 passed by learned Judicial Magistrate 1st Class, Ludhiana, whereby the respondents-accused, namely, Chaman Lal Bhatia and Sudesh Rani were acquitted from notice of accusation framed against them in a criminal complaint filed by the applicant under Sections 323 and 341 read with Section 34 IPC as well as Section 3 (ii) (x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, the SC/ST Act).

Briefly stated, it is the case of the applicant-complainant that she belongs to scheduled caste community, whereas both the accused belong to general caste. The complainant and accused are residing in the same locality and there is one cemented Chauntra between their houses. On 08.06.2011 at

about 04.00 P.M., the complainant went to said Chauntra to throw waste material. When she tried to throw waste material in the drain adjacent to the house of accused, accused Chaman Lal, who was already present there became annoyed and started abusing the complainant. Thereafter, he caused injuries on the right leg of the complainant with the help of his wooden stick. He also used derogatory words against the caste of the complainant. In the meantime, accused Sudesh Rani also came there and she also assaulted the complainant. The entire occurrence was witnessed by one Sonia wife of Durgesh. Thereafter, Ranjit Kaur daughter-in-law of the complainant and Snehpreet came there. Both the accused again used derogatory words against the caste of complainant in their presence. The complainant was taken to the hospital, where she was medico-legally examined.

The matter was reported to the police and an FIR No.121 dated 11.06.2011 under Sections 323 and 341 read with Section 34 IPC as well as Section 3(ii)(x) of the SC/ST Act was registered against the accused at Police Station Sahnewal. However, both the accused were declared innocent by the police during inquiry. Hence, the present complaint.

In her preliminary evidence, the complainant examined herself as CW1 and she also examined Ranjit Kaur as CW2 and Snehpreet as CW3. On the basis of preliminary evidence so recorded, learned trial Court summoned both the accused to face trial under Sections 323 and 341 read with Section 34 IPC vide order dated 13.08.2013.

Notice of accusation was served upon the accused to which they did not plead guilty and claimed trial.

In after-notice evidence, the complainant again appeared in the witness box as CW1 and reiterated the allegations levelled in the complaint. She also examined Ranjit Kaur as CW2 and Snehpreet Kaur as CW3, who also deposed on the lines of allegations levelled by the complainant. The complainant also relied upon the documents i.e. photocopy of MLR Mark-X and attested copy of FIR as Ex.CZ.

Thereafter, statements of both the accused were recorded under Section 313 Cr.P.C., wherein all the incriminating material appearing against them was put to them, but they denied all the allegations and pleaded their innocence and false implication. However, they did not produce any oral or documentary evidence in their defence.

After considering the evidence so produced on record and hearing both the parties, learned trial Court acquitted both the accused from notice of accusation framed against them by giving benefit of doubt vide impugned judgment dated 21.03.2017.

Aggrieved against the aforesaid judgment, the applicant-complainant has filed the present application under Section 378(4) Cr.P.C. for grant of leave to appeal.

Learned counsel for the applicant-complainant has argued that learned trial Court has dismissed the complaint primarily on the ground that the complainant has failed to explain the delay of 5½ hours in reaching the Civil Hospital, Sahnewal. Further, at the time of lodging the FIR, it was nowhere mentioned in the complaint that Snehpreet Kaur was also present at the spot and had witnessed the occurrence.

The very purpose of registering the FIR is just to get the information passed on to the police, so that the police can come in action. The testimony of CW3 Snehpreet Kaur has wrongly been discarded by the trial Court. Similarly, the ocular evidence of CW2 Ranjit Kaur was discarded on the ground that she is daughter-in-law of the complainant and, therefore, she is an interested person.

I have heard learned counsel for the applicant-complainant.

Record reveals that in the complaint, it was mentioned that the entire occurrence was witnessed by one Sonia wife of Durgesh. Besides this, the complainant while appearing in the witness box as CW1 has deposed that at the time of occurrence, son of Kukku reached the spot and clicked the photographs of occurrence. But for the reasons best known to the complaint, neither of these two witnesses were cited in the complaint nor the complainant examined them in her evidence.

In the complaint, it has been stated that CW2 Ranjit Kaur and CW3 Snehpreet Kaur reached the spot only after the accused caused injuries on her person. But at that time, accused were present at the spot. For the same occurrence, FIR No.122 (Mark-X) was also got recorded by the complainant, but in that FIR, the complainant has nowhere stated that CW3 Snehpreet Kaur came present at the spot and witnessed the occurrence. So once the said Snehpreet Kaur had witnessed the occurrence, then why her name was not recorded in the statement made by the complainant on the basis of which FIR No.122 (Mark-X) was registered, creates all doubts.

Further, it has also come on record in the cross-examination of Snehpreet Kaur as CW3 that earlier also, she lodged an FIR No.91 in the year

2010 against the accused at Police Station Sahnewal. It shows that she has strained relations with the accused and in order to settle the score, she has appeared as a witness against the accused. Thus, the presence of CW3 Snehpreet Kaur was not established and she was made up a witness as she has an adverse interest against the accused.

So far as CW2 Ranjit Kaur is concerned, she is the daughter-in-law of the complainant and she being an interested witness, her testimony cannot be outrightly relied upon so as to convict the accused without analysing the other circumstances and evidence.

The argument of learned counsel for the applicant-complainant that the complaint has primarily been dismissed on the ground that there was delay of 5½ hours in reaching the Civil Hospital, Sahnewal, is not tenable because it is not the only reason to dismiss the complaint. Even otherwise, the injuries on the person of complainant are simple in nature and the alleged occurrence had taken place on 08.06.2011 at 04.00 P.M., whereas the complainant reached the Civil Hospital, Sahnewal at 09.30 P.M. after a delay of 5½ hours. The Civil Hospital, Sahnewal is situated within the same locality, where the complainant was otherwise residing, but no satisfactory explanation has come forward from the complainant as to why she reached the Civil Hospital, Sahnewal after 5½ hours.

The applicant-complainant has failed to show any misreading of evidence by learned trial Court and has not been able to point out any legal error in the judgment under challenge which may warrant interference by this Court. When there is no evidence available on record to connect the respondents-accused with the alleged crime, no case is made out for

interference in the impugned judgment of acquittal dated 21.03.2017 passed by learned Judicial Magistrate 1st Class, Ludhiana.

Accordingly, the present application, being devoid of any merit, is dismissed. Leave to appeal is declined.

October 03, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No