

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

CRM-A-2035-MA of 2016.

Decided on:-July 02, 2018.

Nishan Chand.

.....Applicant.

Versus

Jai Inderpal Rana.

.....Respondent.

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

Present:- Mr. Ashutosh Kumar, Advocate for
Mr. Tarun Vir Singh Lehal, 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 02.09.2016 passed by learned Additional Sessions Judge, Gurdaspur, whereby the respondent-accused was acquitted of the charges framed against him in a criminal complaint filed by the applicant under Sections 295-A, 342, 323 and 506 IPC as well as Section 3 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 he is posted as Branch Manager in New India Insurance Company Limited, whereas the respondent-accused is working as a Development Officer in the said branch. The complainant belongs to Kabir Panthi caste, which is a scheduled caste and the accused is aware of this fact. On 10.10.2012 at about

1.00-1.30 P.M., when the complainant was present in his office at Jalandhar Road, Batala, the accused came in his cabin without seeking permission and started pressurizing him to do certain work, which was not genuine. When the complainant refused to do so, the accused left the office. However, after a few minutes, the accused came back and asked the complainant to come out of the office. The complainant went down stairs and the accused gave slaps on his face and removed his turban on the road. He held the complainant from his hair and openly shouted and insulted him by saying *“Tu Chura Chamar Sade Te Hukam Challan Wala Kon Hunda A”* in the name of his caste. The accused also gave kick blows in the stomach of the complainant and also tried to outrage the religious feelings of the complainant by removing his turban and by throwing the same on the road. The accused also caught hold of the complainant from his hair and restrained his movements. Thereafter, the accused left the spot after threatening the complainant that if he refused to do any work, he will show him his right place. The entire occurrence was witnessed by the general public including Rakesh Kumar and Girsih Kumar. The complainant reported the matter to the police, but no action was taken. Hence, the complaint.

After recording the preliminary evidence, learned Sub-Divisional Judicial Magistrate, Batala had summoned the respondent-accused to face the trial under Sections 295-A and 342 IPC as well as Section 3 of the SC/ST Act vide order dated 16.07.2014.

Copies of complaint and other documents were supplied to the accused as required under Section 208 Cr.P.C. Since the offence under

Section 3 of the SC/ST Act was exclusively triable by the Court of Session, the case was committed to the Sessions Court.

On finding a prima-facie case, the respondent-accused was charge sheeted under Sections 295-A and 342 IPC as well as Section 3 of the SC/ST Act vide order dated 21.08.2014 passed by learned trial Court, to which he did not plead guilty and claimed trial.

After considering the evidence produced on record and hearing arguments of both the sides, learned trial Court vide judgment dated 02.09.2016 acquitted the respondent-accused of the charge framed against him.

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 erred in law while passing the impugned judgment and has not appreciated the oral as well as documentary evidence produced by the applicant-complainant. The witnesses examined by the applicant-complainant have duly supported his case, but the trial Court has failed to appreciate their evidence. The trial Court acquitted the respondent-accused, inter alia, on the ground that the complainant in his complaint before the police did not mention the names of the present witnesses, but it did not take into account that the incident took place in front of many people. The witnesses brought before the Court were also present and came to testify about the whole incident. The trial Court has also not considered the police report in a proper perspective and even the arguments of the complainant have not been

included in the impugned judgment. Thus, the impugned judgment is illegal, perverse and liable to be set aside.

I have heard learned counsel for the applicant-complainant.

Perusal of the impugned judgment dated 02.09.2016 passed by learned trial Court reveals that the testimony of witnesses of the complainant, namely, Rakesh Kumar as CW1 and Girish Kumar as CW2 has not been relied upon by the trial Court by holding that they were made witnesses by the complainant after thought and just for making the complaint against the respondent-accused. The relevant findings of learned trial Court are reproduced as under:

“Complainant could not explain in the present trial that how the name of CW-1 Rakesh Kumar and CW-2 Girish Kumar came in the mind of the complainant, whereas in his first version, the names of these persons were not mentioned. Had CW-1 and CW-2 been present at the time of occurrence, the name of both the persons could be mentioned by the complainant in his complaint Ex. D-1 and the name of these persons could be mentioned before the enquiry officer. It might be possible that on the day of occurrence, complainant was not in his full sense, when he appeared before the enquiry officer and on 05.11.2012 he sought time for one day to make his statement and he suffered statement on 06.11.2012 by naming out of two persons David Masih and Gunman of Mahtoot Finance Company, but both the witnesses, when appeared before the enquiry officer categorically stated that no occurrence took place in their presence. Meaning thereby CW-1 and CW-2 were made witnesses by the complainant after thought and just for making the complaint against the accused. Hence, no reliance can be placed upon the deposition of CW-1 Rakesh Kumar and CW-2

Girish Kumar and the version of the complainant is totally falsified because in the present complaint total improved version is given by the complainant and he concocted story by examining two other witnesses CW-1 and CW-2 against the accused.”

Learned trial Court has also found that on the day of occurrence i.e. 10.10.2012, the respondent-accused was on leave and this fact has been duly admitted by the complainant. In the attendance register for 10.10.2012, it has been mentioned that he is on casual leave. The plea of the complainant that the casual leave was marked by the accused forcibly on the next date, cannot be accepted as neither there is any evidence to prove this fact nor any memo letter was issued to the accused. The matter was never brought to the notice of higher authorities. Moreover, the evidence produced by witnesses examined by the respondent-accused i.e. Sukraj Singh as DW1, Jagdish Singh as DW2, Raghbir Singh as DW3 and Gobind Parkash Bedi as DW4 proves that at the relevant time, the accused remained busy in the marriage of his son and was distributing invitation cards to his relatives and friends. The incident is stated to have occurred in the office, when all the employees of the insurance company were present, but no person from the staff of the complainant was examined by the complainant to prove the fact that the occurrence had taken place on 10.10.2012. The staff of the office could be the best evidence to prove the occurrence, but no member of the staff has been examined by the complainant to prove his case. Thus, learned trial Court has rightly observed that the complainant has badly failed to bring home the guilt of accused beyond any reasonable shadow of doubt and accordingly, acquitted the respondent-accused of the charges framed against him.

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 respondent-accused with the alleged crime, no case is made out for interference in the impugned judgment of acquittal dated 02.09.2016 passed by learned Additional Sessions Judge, Gurdaspur.

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

July 02, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No