

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

**CRM-A-2124-MA-2016(O&M)
Date of decision :-26.4.2018**

Daler Singh

..... Applicant

Versus

Bhajan Ram and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Mr.J.S. Saneta, Advocate
for the applicant.

Mr.R.S. Longia, Advocate
for respondents No.2, 4, 5 and 8.

H.S. MADAAN, J.

Complainant Daler Singh had filed a complaint under Sections 323, 324, 342, 506, 148 and 149 IPC against Prem Chand, Bhajan Ram, Kishan Chand, Jille Singh, Roshan, Mahinder, Rajender, Balwan and Suresh on the allegations that on 23.9.2009 at about 8:00 p.m. when the complainant was returning to his house and had reached near house of accused Prem Chand, then Prem Chand having a lathi assaulted the complainant causing him injury on his right arm; then Bhajna Ram armed with *barchha* arrived at the spot and attacked the complainant therewith but the complainant saved himself by moving aside; Bhajna Ram further

attacked with binda of kassi (wooden handle of spade) hitting the complainant on left side of forehead; the complainant raised an alarm, hearing which his brother Ram Mehar and father Jagdish arrived at the spot; in the meanwhile, accused Zile Singh, Roshan, Rajinder, Balwan and Mukesh reached at the spot and attacked the complainant, his brother Ram Mehar and father Jagdish with gandasies and lathies, however, the complainant, his brother Ram Mehar and father Jagdish were saved due to intervention of villagers. The injured was got medically examined. Under political pressure, police registered FIR No.308 dated 29.9.2009, under Sections 323, 324, 506 read with Section 34 IPC against the complainant but no action was taken against the accused. Therefore, the complainant filed a private complaint against them on 23.12.2009.

After recording of preliminary evidence, only accused Prem Chand, Bhajan Ram, Jile Singh, Roshan, Rajender and Balwan were summoned, whereas it was not so as regards the remaining accused Kishan Chand, Mahinder and Suresh. They (Prem Chand, Bhajan Ram, Jile Singh, Roshan, Rajender and Balwan) put in appearance and were granted bail. The case was fixed for pre-charge evidence during the course of which, the complainant examined himself as CW2, besides examining Balbir as CW1 and Dr.Sunita as CW3. After hearing the arguments, the trial Magistrate discharged the accused vide impugned order dated 31.8.2013. The reasons given for doing so are as under:

True, it is trite that at the stage of framing of the charge the Court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether

there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. However, at the same time, framing of charge is a serious step as it is determinative to some extent, in the sense that either the accused is acquitted giving right to challenge to the complainant party, or the State itself, and if the charge is framed, the accused is called upon to face the complete trial which may prove prejudicial to him, if finally acquitted. While coming to the decision whether to discharge or frame charge, the Judge cannot act merely as a Post Office or a mouth-piece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. The aforesaid legal proposition stands fortified by judgments of the Hon'ble Supreme Court in Vinay Tyagi V. Irshad Ali @ Deepak & Ors.: 2013 Cr.L.J.754 and Sheoraj Singh Ahlawat V. State of U.P.: 2013(1) RCR(Cr.) 153 (SC).

In the case in hand, firstly, there is delay of 3 months in filing of the complaint. Allegedly, the incident occurred on 23.9.2009 but the complaint was filed on 23.12.2009. Although, the complainant alleges to have given a complaint (Ex.C-2) to the police on 24.9.2009 but neither there is any receiving or acknowledgment or endorsement on it by police nor any postal receipt etc. is placed on record. On the face of it, this document

does not inspire confidence.

Secondly, in his examination in chief, the complainant appearing as CW-2 stated that he suffered an injury on his right eye due to attack of barchha by accused Bhajna Ram but in his complaint, the complainant has mentioned that he suffered this injury as he had fallen down on floor. He further stated that he has a civil dispute with accused Prem Chand and his family.

Thirdly, the conduct of complainant and other injured is very unnatural which casts serious doubts over the allegations levelled by the complainant in his complaint and evidence. Allegedly, CW-2 and his brother Ram Mehar and father Jagdish received injuries at about 8:00 PM on 23.9.2009 but they went to get first aid at 10:45 AM next morning Further, as per testimony of CW-3 i.e. Dr.Sunita, there was no fresh injury on the person of CW-2 and other injured. All injuries were simple in nature and no injury caused by any sharp weapon was found on person of the injured. Therefore, the allegation of the complainant that he has suffered injuries caused by barchha and gandasi are nullified by CW-3.

Fourthly, in his deposition, CW-2 i.e. the complainant has not mentioned that CW-1 Balbir was also present whereas CW-1 claims himself to be an eye-witness. This witness deposes to have suffered injury but no other witness testifies so. Also, there is no MLR on record to corroborate this allegation.

Fifth, in his pre-charge evidence the complainant did not even examine the alleged injured witnesses i.e. his brother Ram Mehar and father Jagdish.

At the stage of framing charge, the trial Court should sift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution/complainant states as gospel truth. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused.

In view of the foregoing discussion, this Court is of the opinion that the allegations, even if taken on their face, do not give rise to grave suspicion making out a prima-facie case. Therefore, all the accused are hereby discharge.

Feeling aggrieved, the complainant has approached this Court moving an application under Section 378(4) of Code of Criminal Procedure seeking grant of Special Leave to appeal.

On notice, the respondents put in appearance through counsel.

The complainant has approached this Court belatedly and there is delay of 1100 days in filing of application for special leave to appeal.

I have heard learned counsel for the parties besides going through the record.

Section 3 of the Limitation Act, 1963 deals with Bar of Limitation providing that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although

limitation has not been set up as a defence.

The reason given in application under Section 5 of the Limitation Act for condonation of delay is that the applicant had first filed a revision petition in the Court of Sessions under wrong legal advice, which was withdrawn on 3.6.2016, resultantly, appeal was filed. Ignorance of law is no excuse. The reason given in the application does not appear to be very convincing and plausible. Even if the contentions of the applicant are admitted then revision petition had been withdrawn on 3.6.2016, whereas the application under Section 5 of the Limitation Act along with application 378(4) Cr.P.C. was filed on 7.10.2016 i.e. after more than four months thereafter. No convincing reason for doing so has been mentioned. I do not see any reason to condone such huge delay. Therefore, the application is doomed for failure and is dismissed accordingly. The appeal being time barred is also doomed for failure. However, on merits also, the application does not have any case.

Thus there is no ground to grant special leave to appeal in this case. The application is, therefore dismissed accordingly.

(H.S. MADAAN)
JUDGE

26.4.2018
Brij

1. Whether reportable? **No /Yes**
2. Whether speaking / reasoned? **No / Yes**