

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.22011 of 2017
and
Criminal Misc. No.A-1471-MA of 2017

.....

Date of decision:26.9.2018

Labh Singh

...Applicant

v.

Lavish and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. G.C. Shahpuri, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.22011 of 2017:

For the reasons mentioned in the criminal miscellaneous application, the delay of 4 days in filing the appeal and application seeking leave to appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-1471-MA of 2017:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Lavish and others-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 26.4.2017 passed by learned Sub Divisional Judicial Magistrate, Bilaspur (Yamuna Nagar), whereby the complaint filed under Sections 323, 324, 325, 506, 217, 218 and 34 IPC has been dismissed and the accused-respondents 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 26.4.2017 passed by learned Sub Divisional Judicial Magistrate, Bilaspur (Yamuna Nagar), which is likely to succeed on the grounds mentioned therein. It has been stated that the learned Court below committed a grave error of law while acquitting the respondents-accused, holding that the applicant-complainant had failed to prove the case beyond a shadow of reasonable doubt. It has also been stated that by the acquittal of the accused-respondents miscarriage of justice has been done. 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 Labh Singh-complainant filed complaint against Lavish, Bharat, Babu Ram, Dharambir and Amar Singh for the offences under Sections 323, 324, 325, 506, 217, 218 and 34 IPC. The brief facts of the case as noted down by learned Sub Divisional Judicial Magistrate, Bilaspur (Yamuna Nagar), in his judgment dated 26.4.2017 are as under:-

“Brief facts as stated by the complainant in the complaint are that accused No.1 to 4 are inimical towards the complainant because of some private dispute and have grudges against the complainant and his family members. On 10.11.2010, in the afternoon, the complainant was taking tea for his brothers in the fields. On the way, accused No.1 to 4 in furtherance of their

common intention attacked the complainant. Accused No.1 gave a lathi blow which hit on his left hand. The accused No.2 to 4 gave him danda and lathi blows and abused him. The complainant raised hue and cry, upon which his brother Bansi Lal and Pirthi along with one Sukh Pal came there and rescued the complainant from the clutches of the accused. The accused No.1 to 4 threatened the complainant to kill him on getting a chance. The brother of the complainant took the complainant to Civil Hospital, Bilaspur from where he was referred to Civil Hospital, Jagadhri but as no specialist was available there, so he was referred to Civil Hospital, Yamuna Nagar. Intimation regarding occurrence was sent to the Police Station, Bilaspur and case was entrusted to accused No.5 but accused No.5 did not record his statement properly and he did not register the case against accused No.1 to 4 for a long period despite his request. After 15 days, accused No.5 registered FIR No.163 dated 25.11.2010 under Sections 323, 324, 506 and 34 IPC against the complainant and his brother on the basis of some false medical report. Hence, the present complaint.”

On the basis of pre-charge evidence, the accused were charge-sheeted for the offences under Sections 323, 325, 506 and 34 IPC, to which they pleaded not guilty and claimed trial.

In after charge evidence, CW-1 Bansi Lal and CW-2 Labh Singh were further cross-examined. Thereafter, learned counsel for the

complainant tendered certified copy of judgment and decree dated 23.01.2017 as Ex.P.7 and Jalamabdi for the year 2011-12 as Ex.P.8 and closed the post-charge evidence of complainant.

At the close of 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 each of the complainant's allegation and pleaded to be innocent. In defence the accused examined Meera Dabra as DW-1 and Satish Kumar as DW-2 and thereafter closed the defence evidence.

After appreciating the evidence, the accused were acquitted by the learned Sub Divisional Judicial Magistrate, Bilaspur (Yamuna Nagar), vide judgment dated 26.4.2017. Aggrieved from this judgment of acquittal, the present appeal along with application seeking leave to appeal has been filed by the complainant.

I have heard learned counsel for the applicant and have gone through the record.

A perusal of the record shows that firstly, the occurrence took place on 10.11.2010 as per complainant's version but the complaint has been filed on 15.6.2011 against the family of Dharambir and Amar Singh, Assistant Sub Inspector i.e. after more than seven months. No cogent explanation has been given for such a long delay. Though, delay itself is not fatal to the prosecution case, but the unexplained delay is to be scrutinized more cautiously and carefully. A perusal of the record shows that as per the complainant's case itself after 15 days accused No.5 registered FIR No.163

dated 25.11.2010 for the offences under Sections 323, 324, 506 and 34 IPC against the complainant and his brother qua the same occurrence which means that this complaint case is a cross-version to FIR No.163. The accused party had also received the injuries but those injuries have not been explained. Furthermore, the complainant had stated nothing regarding the occurrence and as to how the injuries came on the person of the accused side which means genesis of the occurrence have been concealed by the present applicant. Keeping in view the long delay of 7 months in filing the complaint, concealing the genesis of the occurrence, further not explaining the injuries on the person of the accused side and furthermore the complainant is not giving the specific injuries attributed to the accused side etc., I find that a reasonable doubt exists in the case.

The findings have been given as per evidence and law. In no 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