

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1556-MA of 2017

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Date of decision:27.11.2018

Asha Rani

...Applicant

v.

Avtar Kaur and others

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. M.S. Dhani, Advocate for the applicant.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Avtar Kaur and others-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 22.5.2017 passed by learned Judicial Magistrate Ist Class, Hoshiarpur, whereby the complaint filed under Sections 148, 323, 324, 325 and 506 read with Section 149 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 accompanying appeal is being filed against the judgment dated 22.5.2017 passed by learned Judicial Magistrate Ist Class, Hoshiarpur, which is likely to succeed on the grounds mentioned therein. It has been stated that a perusal of the impugned judgment would show that respondents No.1 and 2/accused have been wrongly acquitted by granting benefit of doubt for the offences charged. It has been submitted that if the leave to file appeal is not granted,

the applicant/appellant would suffer irreparable loss and injury. 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 Asha Rani-complainant filed complaint against Pardeep Singh, Surjit Kaur, Gurmail Singh alias Jaddi, Kamaljit Kaur and Avtar Kaur for the offences under Sections 148, 323, 324, 325 and 506 read with Section 149 IPC. The brief facts of the case as noted down by learned learned Judicial Magistrate Ist Class, Hoshiarpur, in her judgment dated 22.5.2017 are as under:-

“Brief facts of this complaint are that complainant's husband namely Balbir Singh has been dealing in scrap in tenanted shop, situated at Phagwara Road, Mahilpur. Said shop is ownership of Amarjit Singh son of Gurmail Singh. Complainant along with her family is also residing in said shop for the last 25/26 years and all domestic articles were also lying therein. On 05.06.2010 at about 11/12:00 noon, all the accused persons came to said shop. Accused Pardeep Singh was armed with 'Drat'. At that time complainant was sitting in said shop. Pardeep Singh gave 'Drat' blow on the left hand of complainant and second injury with 'drat' has been given on her back. Accused Gurmail Singh raised 'Lalkara' to take forcible possession of shop in question and to kill complainant as well as her husband along with their family members. On which, Surjit Singh and Avtar Kaur abused her and also threatened

with dire consequences. Kamaljit Kaur was also present with other accused. Police has been favouring accused persons that is why name of Kamaljit Kaur has not been mentioned in DDR. Even otherwise, complainant has been insisting police to register FIR against accused persons, but, police has not recorded FIR against them and obliged opposite party being rich persons. Complainant has been approaching police time and again to take action against accused persons, but, of no effect and ultimately police has refused to take any action against them on 20.07.2010. Hence, this complaint.”

A perusal of the record shows that the complaint against accused Surjit Kaur and Kamaljit Kaur was already dismissed and accused Pardeep Singh was declared as proclaimed person. Avtar Kaur and Gurmail Singh alias Jaddi faced the trial and the learned trial Court acquitted them.

I have gone through the record and find that on the basis of preliminary evidence only Pardeep Singh, Gurmail Singh and Avtar Kaur were summoned for the offences under Sections 323, 506 read with Section 149 IPC. Pardeep Singh has been declared as proclaimed offender. Notice of accusation was served upon the accused to which they pleaded not guilty and claimed trial.

To prove her case, complainant-Asha Rani stepped into witness box as CW-3 and examined HC Ravish Kumar as CW-1, Dr. Manpreet Singh Bains as CW-2, Harjit Singh as CW-4, Kashmir Singh as CW-5 and closed her evidence.

At the close of complainant's evidence, the statements of the accused were recorded under Section 313 Cr.P.C. and they were confronted with the evidence against them, but they denied the correctness of the same and pleaded themselves as innocent.

After appreciating the evidence, the accused were acquitted by the learned Judicial Magistrate Ist Class, Hoshiarpur, vide judgment dated 22.5.2017. 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 the allegation against Avtar Kaur is that she abused the complainant at the time of occurrence. As regards Gurmail Singh, 'Lalkara' is attributed to him to take forcible possession and to kill the complainant.

CW-2 Dr. Manpreet Singh Bains, Medical Officer, CHC, Mahilpur found two injuries on the person of complainant Asha Rani, which are as under:-

“1. Lacerated wound of 1 x 0.25 cm and another lacerated wound of 2.5 x 0.25 cm present on the dorsum of left hand.

Advised X-ray.

2. C/o pain in lower back. No external injury mark seen.

Advised X-ray.”

Injury No.2 is simple complaint of pain without any external injury

mark which means there is no such injury suffered by the complainant. As regards injury No.1, this is a lacerated wound which can be caused with blunt weapon, but as per the complainant's version, Pardeep Singh was armed with a sharp edged weapon. The oral statements of the complainant and witnesses are not supported by medical evidence. Furthermore, the doctor in cross-examination stated that possibility of injury No.1 being inflicted by friendly hand cannot be ruled out. He also admitted that injury No.2 cannot be termed as injury according to medical jurisprudence. Otherwise also, no injury has been attributed to accused Avtar Kaur and Gurmail Singh, who faced the trial. There is no cogent evidence on record to prove the offence under Section 506 IPC. Otherwise also, as only three persons were summoned, therefore, the offence under Section 149 IPC is not made out. Further, the learned trial Court found that Gurmail Singh and Avtar Kaur have taken possession of the demised shop by adopting due process of law and the complainant has failed to prove that accused Gurmail Singh and Avtar Kaur ever entered the demised premises and criminally intimidated her. The trial Court discussed the evidence that there was prior enmity between the complainant and the accused persons, who had initiated execution proceedings against the husband of the complainant and there was no occasion with the accused persons to take the possession of demised shop forcibly, when, once they have set the law into motion. The trial Court also relied upon the order Ex.DA passed by the then learned Rent Controller, Hoshiarpur, which specifies that on 17.6.2010 as per orders of Sub Divisional Magistrate, Hoshiarpur, Gurdev Singh retired Naib Tehsildar

went to spot and possession was delivered to decree holder in the presence of police meaning thereby there is no question of taking forcible possession of demised shop either from complainant or from her husband.

A perusal of the record shows that the findings given by the learned trial Court are correct as per evidence and law. The evidence has been appreciated in right and proper perspective. In no way, the findings can be held as perverse. 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.

From the perusal of the record, I find that a reasonable doubt exists in the prosecution version and the learned trial Court has rightly acquitted the accused-respondents. 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.

November 27, 2018.

(Inderjit Singh)
Judge

hsp

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