

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : CRM-A-587-MA of 2016

Date of Decision : January 15, 2018

Jag Mohan Sharma Applicant

Vs.

Neeraj Sharma and others Respondents

CORAM : HON'BLE MR. JUSTICE T. P. S. MANN.

HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

Present : Mr. Ranjan Lakhanpal, Advocate
 for the applicant.

* * *

DEEPAK SIBAL, J. :

Through the instant application filed under Section 378 (4) of the Code of Criminal Procedure, 1973 (for short – the Cr.P.C.), the applicant seeks special leave to appeal against the judgment dated 05.11.2015 passed by the Judicial Magistrate Ist Class, Hansi (for short – the trial court) vide which the respondents have been acquitted of the charges levelled against them by giving them benefit of doubt.

Briefly, the case of the applicant is that he was serving as an Assistant Sub Inspector (ASI) in the Haryana Police and having three children which included two sons and a daughter. His eldest son namely Jatin was serving as an Engineer in a private company; his daughter in

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Ayusman Hospital and his younger son-Nitin was a student.

On 04.11.2006 at 07:00 PM, his eldest son Jatin was hit by a motorcycle which was being driven by respondent no.1 with the son of respondent no.2 riding in pillion. In the altercation that took place thereafter, respondent no.1 inflicted injuries on Jatin's legs. The matter was reported to the police resulting in lodging of FIR No. 7 dated 09.01.2007 against respondent no.1 under Sections 279 and 337 of the Indian Penal Code, 1860 (for short – the IPC).

Respondent no. 1 had made a false ID on the internet in the name of the applicant's daughter namely Neha Sharma and also made obscene calls to his house. With regard to this incident, FIR No. 483 dated 25.11.2006 was registered against respondent no. 1 under Sections 43/67 of the Information Technology Act.

As a counter-blast, respondent no.2, who is a relative of respondent no.1, in collusion with respondent no.3, who was then serving as Station House Officer (SHO) of Police Station City Hansi, lodged a false case against the applicant, his son and one Azad being FIR No. 123 dated 17.04.2005 under Sections 323/325/452/506/34 IPC.

On 15.04.2007, respondents no.1 and 2 along with other persons, after way-laying the applicant's son, abused him resulting in an altercation. On the next day, the brother and sons of respondent no.2, armed with hockeys, gave blows to the applicant's wife. Regarding this

incident, a criminal complaint was filed under Sections 323/452/506 IPC in the court of JMIC, Hansi and while the same was pending, respondent no. 3 forcibly entered the applicant's house and dragged his younger son Nitin to the police station. When the applicant learnt about this incident, he went to the police station and requested respondent no. 3 to release his son but when his requests went unheeded to, the applicant returned home. Half an hour later, his son was released.

On 16.04.2007, at about 11:00 PM, respondent no. 3 gave a telephone call on the telephone installed at the applicant's residence and told his son to send the applicant to the police station so that a compromise could be effected between the parties. Accordingly, the applicant went to the police station. However, respondent no. 3 sent the other party home and locked the applicant behind bars. Respondent no. 3 then undressed the applicant and on the asking of respondent no. 3, in front of the applicant's sister, his niece, his brother, his nephew and other persons, his photographs were taken in naked position. The applicant made a complaint to the higher authorities regarding the incident but to no avail. He then filed a writ petition in this Court which led to the registration of a case against respondents no. 1 to 3 being FIR No. 223 dated 05.07.2007 under Sections 341/342/365/452/147 IPC. After investigation, the police submitted a cancellation report, to which the applicant filed a protest petition, which was treated as a private complaint.

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The trial court, after considering the evidence which had come on record, came to the conclusion that the complainant had miserably failed to bring home the guilt of the respondents beyond all reasonable doubt, through the order impugned in the present proceedings, ordered the acquittal of the respondents of all charges levelled against them by giving them benefit of doubt.

Learned counsel for the applicant submitted that the trial court erred in acquitting the respondents of the charges levelled against them as there was overwhelming evidence on record to prove their guilt. It was submitted that the trial court acquitted the respondents primarily on the ground that the witnesses produced by the applicant were interested witnesses and that the photograph of the applicant in naked position had not been proved. It was submitted that for non-production of independent witnesses as also the photographer, the applicant could not be prejudiced as in spite of all efforts made by him, on account of fear exerted by respondent no. 3, no independent witnesses or the photographer stepped into the witness box.

The above submissions made by learned counsel for the applicant have been considered but the same do not warrant a favourable consideration.

It is not disputed that the trials, which were conducted in pursuance of FIR No. 7 dated 09.01.2007, which was got lodged by the son

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of the applicant against respondent no. 1 and FIR No. 483 dated 25.11.2006, got lodged at the instance of applicant against respondent no. 1, have resulted in the acquittal of the accused therein and against such acquittal, no appeals have been preferred.

In the instant case, as many as 10 prosecution witnesses were got examined by the applicant, out of whom PW-1 to PW-7 were admittedly all closely related to the applicant. So far as PW-8 Mange Ram was concerned, he was an independent witness but a perusal of his deposition does not reveal anything against any of the respondents. All that he stated was that on 16.04.2007, a Panchayat was convened in police station City Hansi, in which no compromise was effected. PW-9 Gulshan Mehta was an official witness, who proved the medico-legal report of the applicant's wife and PW-10 Ramesh Kumar brought call details from the office of Superintendent of Police. Thus, the evidence which came on record against the respondents was only through the depositions of interested witnesses, whose un-corroborated statements, in view of the history of criminal cases between the parties was not reliable. The only independent witness namely PW-8 Mange Ram did not state anything against the respondents.

With regard to the allegations of collusion of respondent no. 3 with the other respondents during the course of investigation of FIR No. 483 dated 25.11.2006, the applicant while appearing as PW-1 admitted that

there was no lacuna on the part of respondent no. 3 and that he had properly investigated the case. Even in the judgment given by the Magistrate in that case, no observation of the Court is found to the effect that there was any lacuna on the part of the investigating agency or that the accused therein were being acquitted for the reason that respondent no. 3 did not appear in the Court as a witness.

The allegations of the applicant that respondent no. 3 came to the house of the applicant on 16.04.2007 and illegally took his son to the police station are also not found proved. Concededly, at the time of such incident, the applicant was himself a police official and to prove his stand, none of the police officials, who had allegedly come along with respondent no. 3, were examined by the applicant. No witness from the locality was also produced. Further, no documentary evidence whatsoever is found on the record to prove these allegations levelled by the applicant. Even otherwise, contradictions are found between the statements of PW-3 Nitin, who is applicant's younger son and PW-8 Mange Ram with regard to arrival of respondent no. 3 in the applicant's house. Improvements in the applicant's case are further found as in the complaint, the applicant did not attribute any allegation towards respondent no. 2 whereas while appearing before the Court, he stated that respondent no. 2 was present in the police van at the time when his son was abducted by respondent no. 3.

With regard to the applicant's wrongful confinement in jail, no

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evidence except the statements of interested witnesses are found on the record. Further, in his complaint, the applicant had stated that he had gone to the police station alone. However, while appearing before the trial court, he improved his earlier version and deposed that he along with his nephew Vikas, Mange Ram – retired Bank Manager and others had gone to the police station.

The version of the applicant that while he was in custody, respondent no. 3 undressed him and on the asking of respondent no. 3, a photographer and press reporters took his photographs, which was also published in the newspaper, are also found not proved. The photograph was only marked as a document and not proved. The photographer or the press reporters were not examined. The newspaper, where the applicant's photograph was allegedly published, was also not produced. It is the case of the applicant that a number of persons were present when his photographs were taken. That being so, it is not believable that in front of the public at large, respondent no. 3, who was the SHO, would call a photographer and press reporters and ask them to click the pictures of the applicant in naked position. While perusing the photograph, we find that the same does not depict the applicant in a naked position. He is found in his underwear.

The allegations of criminal conspiracy between the respondents also find no evidence on record.

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In view of the above, the present application is devoid of any merit and, therefore, dismissed. Special leave to appeal is declined.

(T. P. S. MANN)
JUDGE

(DEEPAK SIBAL)
JUDGE

January 15, 2018
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