

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

CRM No.A-865-MA of 2016 (O&M)

Date of decision: September 25, 2018

Gurdeep Singh

...Applicant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Satbir Rathore, Advocate
for the applicant.

Ms.Monika Jalota, DAG, Punjab
for the respondent-State.

Mr.Vishal Munjal, Advocate for
Mr.Sunil Agnihotril, Advocate
for respondents No.2 to 5.

INDERJIT SINGH, J.

Applicant-Gurdeep Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against State of Punjab and other respondents, challenging the judgment dated 30.01.2016 passed by learned Judicial Magistrate Ist Class, Dasuya, whereby accused-respondents were acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Gurdeep Singh filed a

complaint against accused Satpal, Daljit Kaur, Lakhbir Singh @ Banti and Sandeep @ Bheema under Sections 323 and 34 IPC. The brief averments of the complaint as noted down in the judgment passed by learned JMJC, Dasuya, are as under:-

“2. Brief facts of the present complaint are that the complainant is an RMP and accused No. 1 to 5 reside in the neighbourhood of complainant. On 17/08/2010 at about 7:30 PM/7:45 PM, Yashpal came to house of the complainant and requested him to attend patient Amrit Singh at house of Bimla. At about 8 PM, the complainant sent his son Gurdeep Singh to provide first-aid to the patient Amrit Singh. In the way all the accused in criminal conspiracy with each other, stopped Gurdeep Singh and snatched his gold chain weighing about 15 g valuing around Rs. 30,000 and also took Rs. 4000 which were in the medicine briefcase of the complainant, which were kept there for the purchase of medicines to be done on the next day. Gurdeep Singh raised hue and cry, upon which complainant and his wife came out of the house and many other persons also gathered at the spot including Yashpal Singh, Bimla, Mulkh Raj etc. Accused also manhandled the complainant and his wife and threatened to kill the family of the complainant. The accused also removed the turban of the complainant and slapped him. Surinder Kaur pushed him and as a result he fell down on the ground. The accused Satpal, Baljit, Lakhbir Singh and Bhima were armed with sticks. The accused Satpal gave stick blow on the person of complainant which hit him on his left arm and the accused Lakhbir Singh also hit the complainant on his nose, and the accused Baljit Kaur and Bhima hit him on his right leg. When the complainant's wife came to the rescue, other accused caught hold of her from her hair and gave beatings to his son and wife. The accused also abused the complainant and his wife. The eyewitnesses to this occurrence Yashpal Singh, Bimla and Mulkh Raj saved the complainant and his family members from the accused. On the next day, the complainant was taken to Civil Hospital Dasuya where he was medically examined. He also moved an application in the office of SSP Hoshiarpur on the basis of which the police challaned accused Bhima and Satpal under section 107/151 of the Code of Criminal Procedure along with Gurdeep Singh (son of the complainant) , but no action was taken on the complaint of the complainant.”

In pre-charge evidence, complainant examined CW-1 Dr.Vinod

Sareen, CW-3 Yashpal, CW-4 Gurdeep Singh and examined himself as

CW-2. Earlier, there were eight accused but the Court only summoned Satpal, Daljit Kaur, Lakhbir Singh and Sandeep @ Bheema and complaint against accused Surinder Kaur, Baljinder Singh, Sukhjiwan Singh and Parveen Kumar was dismissed. The accused were charge-sheeted under Sections 323 and 34 IPC, to which they pleaded not guilty and claimed trial.

In after-charge evidence, complainant examined himself as CW-2 and CW-3 Yashpal Singh. At the close of complainant evidence, the accused were examined under Section 313 Cr.P.C. They were confronted with the evidence of the complainant and they denied all the incriminating evidence against them and pleaded their innocence and false implication. They further pleaded that there was a long standing enmity between the complainant and accused and in order to harass them, present complaint has been filed. In defence, accused examined DW-1, who proved the summoned record and also proved on record Calandra Ex.DW1/A under Section 107/151 Cr.P.C. regarding DDR No.20/19.08.2010 and also placed on record Mark-A, order of the SDM, Dasuya. Thereafter, accused examined DW-2 Dr.Didar Singh, who medico legally examined Surinder Kaur wife of accused Satpal Singh on 17.08.2010 at about 9.50 p.m. He stated that three injuries were found on the body of Surinder Kaur, one was on her left eye, second was on her middle finger of left hand and third was on right arm. All the injuries were declared simple in nature. He proved on record MLR as Ex.D2 and pictorial diagram as Ex.DW2/B. During cross-examination, he testified that it was not possible to get injuries No.1 to 3 with friendly hands.

Learned JMIC, Dasuya, after appreciating the evidence,

acquitted the accused-respondents vide impugned judgment dated

30.01.2016.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

Notice of motion was issued. Learned State counsel appeared. Learned counsel respondents No.2 to 5 also appeared and contested the application.

Lower court record was requisitioned.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, first of all, I find that the occurrence in the present case took place on 17.08.2010 and the complaint was filed on 03.11.2010 i.e. after a long delay of about 2½ months. Eight persons were implicated in this case. The Court has summoned only four accused out of eight. Furthermore, the complainant has concealed the genesis of the occurrence. Qua same occurrence, Surinder Kaur, who was made earlier accused but was not summoned by the Court and is wife of accused Satpal, had received three injuries and DW-2 Dr.Didar Singh has stated in this statement that these injuries cannot be caused with friendly hands. The injuries on the accused side have not been explained by the complainant. On this ground, a reasonable doubt exists in the complainant's version. Further, genesis of the occurrence has been concealed, as to how the occurrence took place and how Surinder Kaur received injuries, has not been explained anywhere. Therefore, I find that reasonable doubt exists in the complainant's version.

The perusal of the findings given by learned Court below

shows that these have been given as per evidence and law. In no way, the

findings can be held as perverse or against the evidence and law. At the time of arguments, nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned Court below. The findings have been given by correctly appreciating the evidence in right perspective and accused-respondents have been rightly acquitted.

In view of the above discussion, I find that the impugned judgment dated 30.01.2016 passed by learned JMIC, Dasuya, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

September 25, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No