

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1771-MA of 2014

.....

Date of decision:7.8.2018

Santosh

...Applicant

v.

State of Haryana and others

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Ram Bilas Gupta, Advocate for the applicant.

Mr. B.S. Virk, Deputy Advocate General, Haryana
for respondent No.1-State.

Mr. Ashwani Gaur, Advocate for respondents No.2 to 5 and 9.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against State of Haryana and others-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 15.4.2013 passed by learned Judicial Magistrate Ist Class, Faridabad, whereby the complaint filed under Sections 148, 149, 323, 452 and 506 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 judgment dated 15.4.2013 passed by learned Judicial Magistrate Ist Class, Faridabad, which is likely to succeed on the grounds mentioned therein. It has been stated that in case the

applicant is not granted special leave to file the present appeal against the impugned order, then the applicant shall suffer an irreparable loss and manifest injustice. 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 Santosh-complainant filed complaint against Tilak Raj alias Raj Tilak, Yashbir, Rumal Kaur, Guddi, Udaivir, Munni, Vijay Pal and Indira for the offences under Sections 148, 149, 323, 452 and 506 IPC. The brief facts of the case as noted down by learned Judicial Magistrate Ist Class, Faridabad, in his judgment dated 15.4.2013 are as under:-

“The present complaint has been filed by the complainant-Smt. Santosh alleging therein that accused No.1 to 8 are the inhabitants of their village and are residing near to her house. It is further averred that the husband of the complainant Shripal and accused No.1 Tilak Raj had started a partnership business of sugar (gur) Crasher. However, the said business went into the loss and therefore, they closed their business but accused No.1 did not settle the account of partnership business and approximately Rs.40-50 thousand were due towards him. Whenever, the complainant and her husband Shripal used to demand their money from accused No.1 Tilak Raj, he alongwith accused No.2 to 7 used to abuse and quarrel with the complainant and her husband and always threatened them with dire consequences. On 10.9.2004 at about 7.00 P.M. when the

complainant was milching her cow at her courtyard, accused No.1 to 8 after forming an unlawful assembly armed with lathies and dandas entered into the house of complainant and forcefully started to give beatings to the complainant. Accused No.3 Rimal Kaur slapped the complainant and threatened that today she will settle the account forever. Accused Tilak Raj gave fist blow on her forehead and accused No.4 Guddi gave fist blow on her chest. Accused No.5 Udaivir, accused No.6 Munni and accused No.7 Vijaypal also gave slaps and fist blow to her. Thereafter, accused No.3 Rimal Kaur picked up a stone brick and gave a blow on her left leg. Accused No.8 Indira also gave a stone brick on the left leg of the complainant and also scratched the wrist of the right hand of the complainant by her nails. When she raised alarm, her father-in-law (Gajraj) and her sister-in-law (Devrani Ramwati) came there and rescued her from the clutches of the accused persons. Thereafter, all the accused persons ran away from the spot by extending threats to the complainant. Complainant also reported the matter to the police station Sadar Ballabgarh and the police officials got conducted the medical examination of the complainant in General Hospital, Ballabgarh. Thereafter, the complainant approached the police official on various occasion and requested them to investigate into the matter properly but police officials had gloves in hands with the accused persons

and therefore instead of investigating the matter properly, they started to harass and humiliate her and her husband. Hence, the present complaint has been filed by the complainant.”

After preliminary evidence, the accused persons were summoned to face trial for the offences under Sections 323, 452 and 506 read with Section 149 IPC.

In the revision petition, the order qua accused Yashbir, Guddi, Udaivir, Munni, Vijay and Indira was set aside. The remaining co-accused were charged for the offences under Sections 323 and 452 instead of Sections 323, 452 and 506 IPC, to which they pleaded not guilty and claimed trial.

The complainant examined herself as PW-1, Gajraj father-in-law of the complainant as PW-2, HC Subhash Chand as PW-3 and Dr. R.K. Sharma as PW-4.

The learned Judicial Magistrate Ist Class, Faridabad, after appreciating the evidence acquitted the accused.

Notice of motion has been issued in this case.

Mr. B.S. Virk, learned Deputy Advocate General, Haryana, has appeared on behalf of respondent No.1-State and Mr. Ashwani Gaur, learned Advocate has appeared for respondents No.2 to 5 and 9 and contested this application.

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

I have gone through the findings given by the Court below. A

perusal of the record especially, the judgment shows that the reasoning have been given as per evidence and law. 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. The findings have been given by the Court below after appreciating the evidence in right and proper perspective.

A perusal of the record further shows that the occurrence took place on 10.9.2004 at about 7.00 p.m., whereas the complainant approached the Police on 11.9.2004 when DDR was got registered at about 1.00/1.10 p.m. There is no cogent explanation in respect of this delay of 19 hours. Otherwise also, this complaint has been filed on 5.2.2005. Further, a perusal of the record shows that the occurrence took place on 10.9.2004 at about 7.00 p.m. whereas the MLR was got conducted on 11.9.2004. There is also nothing to explain as to why immediately the MLR was not conducted. It also looks improbable that the accused were armed with sticks and dandas, but none of them gave any injury to the complainant with danda or stick. Even if it is taken that slap and fist blows were given on 10.9.2004 at about 7.00 p.m., whether these injuries can be found by stating complaint of pain etc. on the next day? The motive is also there. The motive is double edged weapon. It has been mentioned that there was dispute regarding the payment of ₹40-50 thousand by the accused to the husband of the complainant, but this motive can also be used to falsely implicate the accused. Further more, if Gajraj Singh was present in the house, then why no injuries were given to him. A reasonable doubt exists in

the prosecution case specially in view of the nature of injuries which are mostly complaint of pain or swelling etc. The learned trial Court has given the findings correctly as per evidence and law, which 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.

August 7, 2018.

(Inderjit Singh)
Judge

hsp

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