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

**CRM No.A-99-MA of 2016 (O&M)  
Date of decision: November 12, 2018**

Brij Mohan

...Applicant

Versus

Som Parkash and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.S.M.Sharma Advocate  
for the applicant.

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**INDERJIT SINGH, J.**

**CRM No.22691of 2018**

The application is allowed, subject to all just exceptions.  
Statement of Brij Mohan is taken on record.

**CRM No.A-99-MA of 2016**

Applicant-Brij Mohan has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Som Parkash and Pankaj, challenging the judgment dated 23.11.2015 passed by learned Judicial Magistrate Ist Class, Ambala, 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 Brij Mohan filed a complaint against accused Som Parkash and Pankaj under Sections 323, 447, 341 and 506 IPC. The brief averments of the complaint as noted down in the judgment passed by learned JMIC, Ambala, are as under:-

*“2. Briefly stated, it has been averred by the complainant that he is resident of House No.5050 Ist Floor, Kasera Mohalla Sadar Bazar Ambala Cantt. The accused no.2 is resident of House No.5050, Kasera Mohalla Sadar Bazar Ambala Cantt. The accused no.1 is resident of Paledar Mohalla Ambala Cantt. Accused are real sons of his brother., but after the death of real brother of complainant, both the accused have started threatening. The complainant said they will kill him. They are also witnessed to occupy the portion of the joint family property which is falling in share of the complainant.*

*On 06.08.2011 the accused entered in the room of the complainant and demanded the keys of the lock of Tanki of wheat storage as they also wanted to store their own wheat. The complainant refused to handover the keys to them as the Tanki being old constructed one, was not in position to bear extra load of the wheat. Then accused started man handling. The accused pushed him and threatened that they will kill him.*

*Accused no.2 also pushed the wife of the complainant. Thereafter, both the accused caught hold the hand of the complainant from the back and locked him in a room and started throwing his luggage.*

*The matter was reported to the police but no action was taken by the local police. He was also medically examined. Hence this complaint.*

In pre-charge evidence, the complainant examined himself as CW-1, CW-2 Kamal Kishore and CW-3 Yogesh Kumar. The accused were charge-sheeted under Sections 323, 447, 341 and 506 IPC, to which they pleaded not guilty and claimed trial. Thereafter, CWs were further cross-examined. 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.

Learned JMIC, Ambala, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 23.11.2015.

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

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

The perusal of the findings given by learned Magistrate 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.

From the perusal of the record, first of all, I find that occurrence took place in the present case on 06.08.2011 but the complaint was filed on 19.08.2011. There is delay of 13 days and there is no explanation regarding this delay in the present case. If it is taken that matter was reported to the police, then why no official from the police station has been examined to show that any application was given or any statement was made to the police or any DDR was lodged. Further, I find that it is the case of the witnesses that 25-30 women of the area gathered at the spot but none

version of the complainant, a push was given to him and accused Pankaj also gave push to wife of the complainant. Thereafter, both the accused caught hold the hands of the complainant from back, locked him in a room and started throwing his luggage but while appearing in the witness box, the complainant stated that his wife was beaten with iron rod and she also received injury mark on her left hand. He also stated that wife of Pankaj handed over *hathodi* to Som Parkash with which he broke the lock of *tanki* and also used abusive language. He also deposed that 25-30 women of the area gathered there. Complainant deposed that the matter was reported to the police and police came at the place of occurrence and assured him that accused will not beat him again but police did not take any action. All these facts show that complainant is materially improving his version. He further improved his version by stating that Kamal Kishore was also sitting at his house, who witnessed the entire occurrence and Kamal Kishore called up his son Yogesh Kumar, who came there along with his friends. In cross-examination, complainant stated that Kamal Kishore had white-washed his house once and he is well known person to him. Yogesh Kumar also deposed that he reached the spot after receiving call from Kamal Kishore, which means that occurrence has already taken place.

The accused persons are nephews of the complainant and are residing in the same house. The perusal of the statement of Yogesh Kumar shows that he had come after the occurrence. The version of the complainant that fight continued for about one hour and statement of Kamal Kishore that fight continued for around two hours, are not believable. As per complainant, only push was given but evidence has been produced that

injuries etc. are not corroborated by medical evidence. Keeping in view the findings given by learned trial Court, I find that findings have been given after correctly discussing the evidence on record and by correctly appreciating the evidence in right perspective and accused-respondents have been rightly acquitted. In no way, the judgment can be held as perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 23.11.2015 passed by learned JMIC, Ambala, 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.

**November 12, 2018**  
Vgulati

**(INDERJIT SINGH)**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable

**Yes**  
**No**