

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

**CRM A-915-MA of 2018**

**Date of decision: 22<sup>nd</sup> November, 2018**

Makhan Singh ..... Applicant

*Versus*

Malkiat Singh and others ..... Respondents

**CORAM: HON'BLE MR.JUSTICE T.P.S.MANN  
HON'BLE MR.JUSTICE ARUN KUMAR TYAGI**

Present: Mr. Iqbal Singh Mann, Advocate for the applicant.

\*\*\*\*\*

**ARUN KUMAR TYAGI, J.**

Makhan Singh, applicant-complainant has filed the present application under Section 378 (4) of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for grant of Leave to Appeal against impugned judgment dated 27.07.2017 passed by learned Additional Sessions Judge, Sri Muktsar Sahib in **Sessions Case No.244/2013** titled as '**State Versus Malkiat Singh and others**', whereby the accused were acquitted of the charges under Sections 397, 336, 427, 148 and 149 of the Indian Penal Code, 1860 (for short 'the IPC') and Section 27 of the Arms Act, 1959 (for short 'the Arms Act').

Briefly stated, the facts giving rise to the filing of the present application are that Makhan Singh submitted an application to Deputy Inspector General of Police, Ferozepur Range, Ferozepur Cantonment. In his application, Makhan Singh

averred that he is Mahant of the Gurudwara Ramsar Sahib of village Mallan and the Gurudwara is owner in possession of land measuring 39 Kanals 18 Marlas which is under his cultivation. A kotha and school exist on some part of the land and cultivation of wheat crop is being done on the remaining land. He had given an application dated 16.04.2002 alleging that accused in connivance with the police want to harvest the wheat crop and on 20.04.2002 at about 6.00 P.M. when the complainant along with Roop Singh, Harbans Singh, Joginder Singh, Naib Singh and Charanjit Singh were sitting in kotha, accused Sohan Singh, Bakhtaur Singh armed with 12 bore guns and other accused armed with sticks etc. came on three tractor trolleys owned by Bakhtaur Singh, Kala Singh and Malkiat Singh driven by Joginder Singh, Kala Singh and Malkiat Singh and a combine. The accused raised lalkara and started harvesting wheat crop with help of the combine. When the complainant party tried to stop then Sohan Singh and Bakhtaur Singh threatened them and fired towards the complainant. The accused took away about 200 bags of wheat on the tractor trolleys and demolished the kotha and took away the articles lying in the kotha.

The above said application was marked to D.S.P., Fazilka for inquiry, who submitted the Inquiry Report. Thereupon, opinion of the District Attorney was obtained, on the basis of which, FIR No.41 dated 05.04.2003 was registered against the accused. The police investigated the case and on completion of

usual steps of investigation, filed Charge-Sheet against the accused.

The case was committed to the Court of Session by learned Illaqa Magistrate. On finding prima facie case, charges under Sections 392, 395, 427, 336, 148 and 149 of the IPC and Section 27 of the Arms Act were framed against the accused to which the accused pleaded not guilty and claimed trial. Accused Sohan Singh, Ranjit Singh and Gurbachan Singh died during trial.

To prove its case, the prosecution examined PW-1 complainant-Makhan Singh; PW-2 Jalandhar Singh; PW-3 Naib Singh; PW-4 Retired Inspector Banta Singh; PW-5 Neeraj Kumar, Clerk of office of DTO, Sri Muktsar Sahib; PW-6 Gurdas Singh, Patwari Halqa, Mallan-I; PW-7 Naib Singh; PW-8 S.I. Bhola Singh; PW-9 S.I. Mohinderjit Singh and PW-10 Harivansh, Data Entry Operator, DTO Office, Faridkot. On closing of the prosecution evidence by the learned Additional Public Prosecutor for the State, statements of accused under Section 313 Cr.P.C. were recorded wherein the accused denied commission of alleged offences and pleaded false implication. The accused examined DW-1 Gursewak Singh; DW-2 Ranjeet Singh; DW-3 Gurtej Singh; DW-4 Jaskaran Singh; DW-5 Gurdas Singh and DW-6 Surjit Singh (wrongly numbered as DW-5 again) in their defence.

On conclusion of the trial, learned Additional Sessions Judge, Sri Muktsar Sahib acquitted the accused of the charges framed against them by giving them benefit of doubt.

Feeling aggrieved, the applicant-complainant has filed the present application.

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

Learned counsel for the applicant has argued that by testimony of PW-1 Makhan Singh, which is corroborated by testimony of PW-2 Jalandhar Singh and PW-3 Naib Singh and substantiated by other oral and documentary evidence in all material particulars, the prosecution has proved the guilt of the accused beyond reasonable doubt. The learned Additional Sessions Judge, Muktsar Sahib has not properly appreciated the evidence and has wrongly acquitted the accused of the charges framed against them resulting in miscarriage of justice. Therefore, leave to appeal against the impugned judgment may be granted.

The case of the prosecution is that Makhan Singh is Mukh Sevadar/Mahant of the Gurudwara Ramsar Sahib, situated at Village Mallan. The Gurudwara Ramsar Sahib is owner-in possession of land measuring 39 Kanals and 18 Marlas. The aforesaid land has been leased out by Makhan Singh to Jalandhar Singh. A *Kotha* and School existed on the aforesaid land. On 20.04.2002 at about 06.00 P.M., all the accused, being armed with deadly weapons, formed an unlawful assembly and in prosecution of the common object of the unlawful assembly, accused Sohan Singh and Bakhtaur Singh threatened and in

violation of the conditions of the Arms Licenses granted to them fired in the air from their respective guns and all the accused harvested the wheat crop, demolished the *Kotha* and took away 200 bags of wheat and the articles lying there.

PW-1 Makhan Singh has stated that he is Mukh Sewadar/Mahant of the Gurudwara Sahib. The land in question measuring 39 Kanals 18 Marlas was donated to the Gurudwara Sahib in the year 1929-30 and since then the above-said land is in possession of the Gurudwara Sahib. PW-1 Makhan Singh has further stated that the above-said land, which was earlier given to Budda Dal and was cultivated by the Sewadars of the Gurudwara Sahib, had been leased out to Jalandhar Singh for the year 2001-2002. However, this oral evidence is not supported by revenue record or any other documentary evidence to prove that the above-said land was donated to the Gurudwara Ramsar Sahib in the year 1929-30 and was since then in possession of the Gurudwara Sahib or was ever given to or remained in possession of Budda Dal. Even the claim as to installation of Nishan Sahib was not supported by the revenue record proved by PW-6 Gurdas Singh, Patwari Halqa Mallan-I. Jathedar Dayal Singh had, by alleging himself to be General Power of Attorney of the Gurudwara Ramsar Sahib, filed a case for eviction of accused Sohan Singh which was dismissed by Assistant Collector IInd Grade, vide order Ex.DX/A5 on the ground that landlord-tenant relationship between the Gurudwara Sahib and Sohan Singh was

not proved. Mutation No.9150 (Ex.Dx/A) was entered in respect of the above-said land in the name of accused-Sohan Singh on 28.08.1998 which fact was even admitted by PW-1 Makhan Singh in his cross-examination. The Tehsildar-cum-Collector had, vide order dated 29.04.2002 (Ex.DX/A2), corrected Khasra-Girdawari entries in the name of accused-Sohan Singh. The prosecution did not produce any evidence to show that the above-said mutation and Khasra-Girdawari entries have ever been challenged or got set aside or corrected by the Gurudwara Sahib. Uncorroborated oral evidence does not warrant acceptance and in view of the revenue record the Gurudwara Sahib could not be said to be in possession of the above-said land. Therefore, the question of leasing out of the land in question by Makhan Singh on behalf of the Gurudwara Sahib to Jalandhar Singh did not arise.

As per the prosecution version, Makhan Singh along with Roop Singh, Harbans Singh, Joginder Singh, Naib Singh and Charanjit Singh were sitting in the *Kotha* of the Gurudwara Sahib at the time of the alleged occurrence. The prosecution examined Makhan Singh as PW-1 and Naib Singh as PW-3 but the prosecution did not examine any of the other persons present at the time of occurrence. PW-1, Makhan Singh has deposed about the occurrence but PW-3, Naib Singh denied having witnessed any such occurrence. PW-2, Jalandhar Singh admitted that he had not seen any such occurrence and he was only informed

about the occurrence on the next day by his neighbours, namely, Sewak Singh and Jaskaran Singh. Jaskaran Singh examined as DW-5 by the prosecution, denied having informed PW-2, Jalandhar Singh. In these circumstances, self-serving testimony of PW-1 Makhan Singh, which is not supported by any other cogent and reliable oral or documentary evidence could not be relied upon.

Further, it may be observed that in statement Ex.PW-1/B, admitted by PW-1 Makhan Singh (the applicant-complainant) to have been made him to Dy.S.P., Fazilka and to bear his signatures, PW-1 Makhan Singh had merely mentioned that Malkiat Singh with the help of Dy.S.P. Sukhjinder Singh harvested wheat crop and took away the same along with one electricity motor, one out of order electricity motor, two ceiling fans, one table fan, utensils and Nishan Sahib and in his above-said statement, he did not name other accused and did not mention about use of tractor-trolleys or Combine and use of fire arms by them. The omission to name other accused and use of tractor-trolleys and fire arms adversely affects the credibility of the prosecution version and makes the same doubtful. DW-6 (wrongly numbered as DW-5) Surjit Singh, I.P.S., Superintendent of Police on inquiry found that accused Sohan Singh was possession of the land in question and had sown and harvested the wheat crop and no such occurrence as alleged had taken place which substantiates the case of the accused. Written

complaint in question was made to Deputy Inspector General of Police, Ferozepur Range, Ferozepur Cantonment after three days of the occurrence with undue, unreasonable and un-explained delay and the same being the product of deliberation, concoction and manipulation also renders the prosecution version doubtful.

So far as the case of the prosecution as to commission of offence punishable under section 27 of the Arms Act by accused Sohan Singh (since deceased) and Bakhtaur Singh is concerned no empty cartridges were recovered from the spot and guns recovered were not sent to FSL to establish use thereof. Even requisite sanction under Section 27 of the Arms Act for prosecuting accused-Sohan Singh (since deceased) and Bakhtaur Singh was also not obtained by the prosecution.

In these facts and circumstances of the case, the application fails to make out any arguable case for grant of special leave to appeal and is devoid of any merit. Therefore, the application is dismissed and special leave to appeal is declined.

**( T.P.S.MANN )**  
**JUDGE**

**(ARUN KUMAR TYAGI)**  
**JUDGE**

**November 22, 2018**

Kavneet/vinay

*Whether speaking/reasoned*

*Yes/No*

*Whether Reportable*

*Yes/No*