

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.942 of 2014
and
Criminal Misc. No.A-26-MA of 2014

.....

Date of decision:09.10.2018

Nazir Ahmad

...Applicant

v.

Mehmood and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Ashish Gupta, Advocate for the applicant.

Mr. Balraj Gujjar, Advocate for the respondents.

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Inderjit Singh, J.

Cr. Misc. No.942 of 2014:

For the reasons mentioned in the criminal miscellaneous application, the delay of 34 days in filing the appeal and application seeking leave to appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-26-MA of 2014:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) read with Section 482 Cr.P.C. against Mehmood and others-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 9.9.2013 passed by learned Sub Divisional Judicial Magistrate, Ferozepur Jhirka, whereby the

criminal complaint filed under Sections 323, 452, 506 and 34 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 9.9.2013 passed by learned Sub Divisional Judicial Magistrate, Ferozepur Jhirka, which is likely to succeed on the grounds mentioned therein. It has been stated that the the learned trial Court while acquitting the respondents-accused has acted contrary to law. The evidence on record has not been appreciated at all. The reasons given for acquittal are wholly erroneous and unsound. It has been stated that the learned trial Court totally erred in law while not taking note of the material evidence available on the record. The impugned judgment/order has resulted in miscarriage of justice and is incorrect and is legally untenable. 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 Nazir Ahmad-complainant filed complaint against Mehmood, Akhtar, Alimuddin, Mubarik, Smt. Hasina and Smt. Hasan Basri for the offences under Sections 323, 452, 506 and 34 IPC. The brief facts of the case as noted down by learned Sub Divisional Judicial Magistrate, Ferozepur Jhirka, in his judgment dated 9.9.2013 are as under:-

“This complaint has been filed by complainant Nazir Ahmad against accused aforementioned on the allegations that Nazir Ahmad had 3 bigha land at Panjhoda, wherein he had sown mustard and barely. On 7.2.2006 at 3.00 pm, Irshad S/o

Mehmood started grazing his goat and cow in his fields on which his son Akhlak Ahmad and daughters Sabrina and Rukseena objected. Irshad started beating Akhlak and when his daughters intervened, Irshad went away crying. He stated that he would return with his family members to teach them a lesson. The complainant alleged that there was previous enmity with the accused on account of the fact that the complainant had appeared as a witness in a case against accused-Mubarik under section 376 of IPC. It has further been alleged that on 7.2.2006 at around 6.30 p.m., while the complainant was present at his home, all the accused entered his house with lathis and chantiya and exhorted that they would finish them all. Alimuddin hit his wife with a chantiya on her head, while Mubarik hit him on the head with a lathi. Akhtar also gave a lathi blow on his head, while Mubarik kicked him in the chest. Hasina and Hasan Basri felled his wife on the ground and gave punches and kicks to her. Several persons of the village gathered at the spot. His relatives Deen Mhd and Usman, who had come to their village to purchase pulas, rescued them from the clutches of the accused. Accused, while leaving, stated that they would kill the complainant in future. Later on Sarpanch Ashu took him to Om Parkash Compounder instead of taking them to CHC Ferozepur Jhirka, there he sutured the wounds and administered first aid. As the night had fallen, they

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returned home and on the next day, they went to CHC Ferozepur Jhirka and got themselves medico-legally examined. Information was also sent to the police station Ferozepur Jhirka and police also had recorded their statements, but no action was taken.”

The accused-respondents were summoned to face trial for the offences under Sections 323, 452, 506 and 34 IPC. The complainant examined PW-1 Deen Mohd, PW-2 Usman, himself as PW-3 and his wife Asri as PW-4 and PW-5 Dr. Santosh Kumari Jain in pre-charge evidence.

At the close of complainant's evidence, the accused were examined under Section 313 Cr.P.C. and confronted with the evidence against them, but they denied the correctness of the evidence and pleaded themselves as innocent.

After appreciating the evidence, the accused were acquitted by the learned Sub Divisional Judicial Magistrate, Ferozepur Jhirka, vide judgment dated 9.9.2013. Aggrieved from this judgment of acquittal, the present appeal along with application seeking leave to appeal has been filed by the complainant.

Notice of motion was issued in this application.

Mr. Balraj Gujjar, learned Advocate has appeared on behalf of the respondents and contested this application.

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

From the record, I find that the reasoning given by the learned

Sub Divisional Judicial Magistrate, Ferozepur Jhirka, are 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. A perusal of the record shows that the findings have been given by the trial Court after appreciating the evidence in right and proper perspective. In the present case, the occurrence took place on 7.2.2006 and the complaint was filed on 6.3.2006 and this delay has not been explained. Further no independent witness had been examined though it has been stated that so many witnesses reached on the spot. Furthermore, PW-1 and PW-2 are the relatives of the complainant and no independent witness has been examined. The PWs are interested witnesses. Further, though the matter was reported to the Police, but it was resolved between the parties. A copy of the application has been placed on record by learned defence counsel as Mark.D-1. When confronted with the document, the complainant stated that the compromise was drawn by exercising coercion on him. It is also the case of the accused that it is a counter-blast to a criminal case already pending against the complainant for inflicting injuries to Umarbee. The case of the accused is that medical certificate has been forged.

A perusal of the medical evidence also shows that mainly the injuries are complaint of pain and one injury is stated to be lacerated wound whereas in the complaint so many injuries had been attributed which are not proved on the record. Ashu-Sarpanch, who allegedly had taken the injured to the Hospital, has not been examined. Om Parkash Compounder, who

allegedly had given first aid to the injured, has also not been examined. The doctor did not mention the origin of the injuries of the complainant and his wife. Moreover, the MLR belies the contention of the complainant that Asri had been hit on the head with an axe. It mentions that all the injuries have been caused with a blunt weapon. One of the witnesses CW-2 Usman did not appear for further cross-examination after the charge. The Court below also disbelieved the version and found doubt in the version of the complainant on the ground that Asri stated that she had become unconscious. The eye witnesses being her distant relatives were most likely to have taken her to the Hospital immediately, more so when they were staying at the house of Asri. Since they took no steps to take her to the Hospital and admittedly had suffered no injuries while rescuing the complainant. These PWs were not aware as to where the incident took place which clearly shows that they were not present at the time of incident. The Court below held that though the injuries had been sustained but these have not been sustained in the manner depicted in the complaint. A reasonable doubt exists in the prosecution version. The true facts have not been given.

Keeping in view the above facts, I find that the findings given by the learned trial Court are correct as per evidence and law, specially in view of the delay in filing the complaint creates a reasonable doubt in the complainant's case and benefit of doubt always goes to the accused.

From the above facts, I find that a reasonable doubt exists in the case of the complainant and the learned trial Court has correctly acquitted the accused. The findings have been given by the Court below

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after appreciating the evidence in right and proper perspective which are as per evidence and law and the same do not require any interference from this Court and the same are upheld.

In view of 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.

October 09, 2018.

(Inderjit Singh)
Judge

hsp

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