

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.A-41-MA of 2014

.....

Date of decision:01.10.2018

Teja Singh

...Applicant

v.

State of Punjab and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. R.S. Malhotra and Ms. Surinder Kaur, Advocates for the applicant.

Mr. Pawan Sharda, Senior Deputy Advocate General, Punjab for respondent No.1-State.

Mr. Sandeep Arora, Advocate for respondents No.2 to 4.

.....

Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against State of Punjab and others-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 7.9.2012 passed by learned Additional Sessions Judge, Jalandhar, vide which appeal against the judgment of conviction and order of sentence dated 29.8.2011 passed by learned Judicial Magistrate Ist Class, Jalandhar, in criminal case No.289/2009 instituted on 7.3.2008, has been accepted and the accused-respondents No.2 to 4 have 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 7.9.2012

passed by learned Additional Sessions Judge, Jalandhar, which is likely to succeed on the grounds mentioned therein. It has been stated that the learned Additional Sessions Judge has completely misread the evidence on the file and wrongly and illegally acquitted the accused-respondents No.2 to 4 without any cogent reasons. It has also been mentioned that the appellant shall suffer irreparable loss and injury in case the leave to appeal is not granted. 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 challan against Sukhwinder Singh, Balvir Kaur and Tarsem Singh was presented in FIR No.16 dated 10.2.2008 got registered on the statement of Teja Singh for the offences under Sections 325, 323, 341 and 34 IPC at Police Station Bhogpur, Jalandhar. The brief facts of the case as noted down by learned Judicial Magistrate Ist Class, Jalandhar, in her judgment dated 29.8.2011 are as under:-

“Briefly stated story of prosecution is that on 5.2.08, on receiving one MLR No.SJ/7/08 in respect of Teja Singh, ASI Avtar Singh reached CHC Kala Bakra, Jalandhar. On written request, the concerned doctor declared the injured fit to make the statement. But the complainant/injured did not get recorded his statement due to likelihood of compromise. Thereafter, ASI Avtar Singh alongwith other officials again visited the civil hospital, Jalandhar, where complainant Teja Singh got recorded his statement before the police to the effect that he is resident of village Buttran, Jalandhar and is an agriculturist by profession.

It is stated that on 4.2.08 at about 6.30 P.M., he was coming toward his Dera on his bicycle after watching the Kabadi Toumament. It is stated that when he reached near the Haveli of Durga Suniara (goldsmith), accused Sukhwinder Singh was already present there and gave iron blow which hit on his eye and he raised alarm. At this accused Tarsem Singh gave Dang blow which hit on his right shoulder and due to fear when he tried to run away, accused Balvir Kaur caught hold him from his hair and he raised hue and cry. On hearing noise, many villagers came at the spot and all the accused ran away from the spot alongwith their respective weapons. It is stated that after restraining him (complainant) forcibly, accused caused injuries on his person and also threatened with dire consequences. After arranging vehicle, he was got admitted in CHC Kala Bakra, Jalandhar by his wife thereafter he was referred to civil hospital, Jalandhar and prayed that action be taken against the accused. On the basis of this statement, FIR was registered against the accused. Statements of the witnesses were recorded. After completion of the necessary formalities of the investigation, challan against the accused was prepared and presented in the Court.”

On finding a *prima facie* case, charges against accused were framed for the offences under Sections 325, 323, 341 and 34 IPC, to which they pleaded not guilty and claimed trial.

To prove its case, the prosecution examined PW-1 ASI Avtar Singh, Investigating Officer, PW-2 Hardip Singh, PW-3 Dr. Surinder Jagat, PW-Teja Singh-complainant and PW-5 Dr. Harkirat Singh and closed its evidence.

At the close of evidence, the statements of the accused were recorded under Section 313 Cr.P.C. and confronted with the evidence produced against them, but they denied the correctness of the same and pleaded themselves as innocent.

In defence, they examined DW-1 Sarwan Singh, who stated that Teja Singh received injury on his eye due to falling from the bicycle and the accused have been falsely implicated in the case as no quarrel/fight took place between the accused and the complainant.

The learned Judicial Magistrate Ist Class, Jalandhar, after appreciating the evidence, convicted the accused for the offences under Sections 325, 323, 341 read with Section 34 IPC. They were sentenced to undergo rigorous imprisonment for three years and to pay a fine of ₹1,000/- and in default thereof to further undergo simple imprisonment for six months each for the offence under Section 325 IPC. They were also sentenced to undergo rigorous imprisonment for six months each for the offence under Section 323 IPC. They were also sentenced to undergo rigorous imprisonment for one month each for the offence under Section 341 IPC. Aggrieved from this judgment and order, an appeal was filed before the learned Sessions Judge, Jalandhar, which was allowed by the learned Additional Sessions Judge, Jalandhar vide impugned judgment

dated 7.9.2012 and the accused-respondents No.2 to 4 have been acquitted of the charges as framed against them. Aggrieved from the impugned judgment of acquitted passed by the learned Additional Sessions Judge, the complainant has filed the present appeal along with application seeking leave to file appeal against the State of Punjab and the accused-respondents No.2 to 4.

Notice of motion was issued in this case.

Mr. Pawan Sharda, learned Senior Deputy Advocate General, Punjab has appeared on behalf of respondent No.1-State and Mr. Sandeep Arora, learned Advocate has appeared for respondents No.2 to 4 and contested this application seeking leave to appeal.

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

From the record, I find that first of all in the present case occurrence took place on 4.2.2008 and the FIR was registered on 10.2.2008. It has been mentioned in the FIR that on receiving MLR in respect of Teja Singh, ASI Avtar Singh, Investigating Officer went to the hospital for recording the statement of Teja Singh-injured, but he did not get recorded his statement due to likelihood of compromise. This delay of six days in recording the FIR has not been explained. No person from the side of the complainant has been produced to prove that any compromise talk was going on between the parties. Therefore, this long delay in recording the FIR has remained unexplained specially in view of the facts and circumstances of the present case which creates doubt. As per the

allegations, Sukhwinder Singh accused gave iron blow which hit on his eye but as per the MLR there is no external injury found on any outer part of the eye. If the injury is given with some iron rod or iron object there must be some external injury but there is no such injury found in the MLR which creates a reasonable doubt in the prosecution version. Similarly, it also looks unnatural that when two persons with Dang etc. are present there then why Balvir Kaur will interfere and will catch hold of the injured. Furthermore, there is no independent witness examined, as per the case of the complainant, so many persons were going on there. Furthermore, only one corroborative witness is Hardeep Singh. He is close relative of the complainant. The Court below after discussing that the medical evidence is not corroborating the oral version, there being delay, there being contradictions and the version not probable, acquitted the accused rightly after appreciating the evidence in right perspective.

Keeping in view the above facts, I find that the reasoning given by the learned Additional Sessions Judge, Jalandhar, 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 reasonable doubt exists in the case of the complainant and the learned Additional Sessions Judge, Jalandhar, has acquitted the accused. The findings have been given by the Court below 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.

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.

October 01, 2018.

(Inderjit Singh)
Judge

hsp

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