

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-413-MA of 2015

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Date of decision:7.8.2018

Lachhman Dass

...Applicant

v.

Kashmiri Lal and others

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Madan Lal Saini, Advocate for the applicant.

Mr. Rakesh Gupta, Advocate for the respondents.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Kashmiri Lal and others-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 3.1.2015 passed by learned Sub Divisional Judicial Magistrate, Balachaur (S.B.S. Nagar), whereby the complaint filed under Sections 452, 323, 427, 148 read with Section 149 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 3.1.2015 passed by learned Sub Divisional Judicial Magistrate, Balachaur (S.B.S.

Nagar), which is likely to succeed on the grounds mentioned therein. It has been stated that the learned trial Court has wrongly acquitted the accused despite the fact that the applicant has proved on record the entire incident by bringing cogent evidence. 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 Lachhman Dass-complainant filed complaint against Kashmiri Lal, Usha Rani, Joginder Kaur, Shindo, Karnail Kaur and Swarni for the offences under Sections 452, 323, 427, 148 read with Section 149 IPC. The brief facts of the case as noted down by learned Sub Divisional Judicial Magistrate, Balachaur (S.B.S. Nagar), in his judgment dated 3.1.2015 are as under:-

“Present complaint was filed by Lachhman Dass against accused Kashmiri Lal and others on 23.02.2012, alleging that he and all the accused are permanent residents of Village Bang Bet and a civil suit titled as “Lachhman Dass Vs. Gram Panchayat etc.” is pending in this Court. On 27.12.2011, at about 01.00 p.m., all the accused persons hatched a conspiracy and formed an unlawful assembly and thereafter, criminally trespassed into his house. Out of their common intention, all the accused persons entered into his house and attacked his family members, damaged the gate of his house and even thrashed his family members. The occurrence was witnessed by Darshan Lal son of Dalipa Ram, Daulat Ram and photographs were taken by Harmesh Lal. The matter was

reported to the local police vide application dated 29.12.2011 and were repeatedly requested to take suitable action against the culprits, but the accused are very influential persons. One of the accused, namely, Usha Rani is the Sarpanch of the Village and has say in the local police and the local police did not take any action against them, which necessitated filing of the present complaint.”

On the basis of preliminary evidence led by the complainant, accused were summoned to face trial under Sections 148, 452, 323 and 427 of Indian Penal Code.

After pre-charge evidence, the trial Court finding *prima facie* case against the accused, framed charges for the offences under Sections 148, 452, 323 and 427 read with Section 149 IPC, to which they pleaded not guilty and claimed trial.

The complainant examined himself as CW-1 and CW-2 Darshan Ram (eye-witness) and they were cross-examined by the learned counsel for accused and thereafter, complainant closed his evidence.

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

The learned Sub Divisional Judicial Magistrate, Balachaur (S.B.S. Nagar), after appreciating the evidence acquitted the accused. Aggrieved from the impugned judgment, the complainant has filed the

appeal along with application seeking leave to file appeal.

Notice of motion has been issued in this case.

Mr. Rakesh Gupta, learned Advocate has appeared on behalf of respondents and contested this application.

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

From the perusal of the record especially, the impugned judgment of the trial Court, I find that, in no way, the findings given by the learned trial Court 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.

It is a case of causing injuries to the complainant. As per allegations, on 27.12.2011 at about 1.00 p.m., all the accused persons hatched a conspiracy and formed an unlawful assembly and thereafter, criminally trespassed into his house and attacked his family members, damaged the gate of his house and even thrashed his family members. The occurrence was witnessed by Darshan Lal son of Dalipa Ram, Daulat Ram and photographs were taken by Harmesh Lal. The matter was reported to the local police vide application dated 29.12.2011. However, there is no cogent explanation regarding the delay in reporting the matter to the Police. No doctor has been examined to prove the injuries on the person of complainant or any family member. The learned trial Court held that the

application moved to the Police has not been proved according to law and this complaint was filed after two months of the occurrence and that delay has not been explained. CW-2 Darshan has admitted that he was not present in the house at the time of alleged occurrence. He has also admitted the pendency of the civil litigation between the parties. There is no allegation with regard to any injury on the person of anyone and the same has not been explained.

Lachhman Dass-complainant has also admitted that he was not present at the spot when alleged occurrence took place. Daljit Singh grandson of the complainant was not examined by the complainant, who has been alleged to be eye witness. The complainant was not present at the place of occurrence when the alleged occurrence took place and he had received information from his grandson Daljit but Daljit has not been examined. Neither Daljit nor daughter-in-law and wife of the complainant were examined as witnesses in the Court by the complainant who were stated to be present in the house. Darshan Ram, alleged eye-witness has also not uttered even a single word regarding any injury caused by accused. He admitted that at the time of occurrence he was present in his house.

The findings given by the learned trial Court are correct as per evidence and law. The evidence has been appreciated in proper and right perspective. 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

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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