

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

**CRM-A-655-MA of 2015 (O&M)
DATE OF DECISION :- February 23, 2018**

Gurdial Singh

...Applicant

Versus

Gurvinder Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Nitish Garg, Advocate for the applicant

Complainant Gurdial Singh had filed a complaint under Section 447, 448, 452, 453, 456, 504, 506, 34 IPC against Gurvinder Singh and his wife Manjit Kaur, both arrayed as accused on the allegations that the complainant is owner of a plot measuring 16 marlas situated at Bhucho Kalan which he had enclosed with a boundary wall and had been using it for tethering of the cattle and for other purposes. That the accused had been trying to grab that property.

On 31.12.2003 at about 7.00 P.M., both the accused with the help of some unknown persons tried to demolish the boundary wall of that plot and installed a gate therein with an intention to take possession of the plot. When complainant raised objection then both the accused abused him and caught hold of him from his neck with an intention to beat him. An F.I.R. no. 45 dated 4.10.2004 was registered at Police Station Cantt but no action was taken by the local police. The police had moved cancellation

report with regard to F.I.R. on false ground, as such he filed a private complaint before Judicial Magistrate Ist Class, Bathinda.

After recording preliminary evidence, accused were summoned for offence under Section 447 IPC. Accused put in appearance and were admitted to bail.

The complainant led pre charge evidence by himself appearing as CW1 and examined Yadwinder Singh CW2 and Jaggar Singh CW3.

Thereafter, charge for offence under Section 447 IPC was framed against the accused to which they pleaded not guilty and claimed trial. The accused subjected all the three witnesses to further cross examine and after framing of charge, complainant closed the evidence.

Statements of accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against them in the prosecution evidence were put to such accused but they denied the same contending that they are innocent and have been falsely involved in this case.

The accused pleaded that there was a pathway in the plot, now occupied by Gurdial Singh; Gurdial Singh apprehended that they may not approach the village Panchayat to reopen the pathway in the plot so he concocted the story and submitted a false complaint to the police. The matter was thoroughly investigated. Even the higher officials of police investigated the matter and found, the complaint of Gurdial Singh false and recommended no action against them. In defence, accused tendered copy of enquiry report Ex.D1 and copy of cancellation report Ex.D2 and closed their defence evidence.

After hearing arguments, the trial Magistrate dismissed the

complaint. The reasoning is given in para no. 11 and 12 of the complaint,

For ready reference the same is reproduced as under :-

“11. In the present case, accused have been charge sheeted for offence under Section 447 IPC. As per provisions of Sections 447 IPC, in order to establish the charge against the accused, complainant was to establish that he was in possession of the property where the accused persons tried to trespass. But the complainant could not produce any record regarding his possession over the land as alleged by him. On the other hand, accused persons have placed on record copy of enquiry report Ex.D2 wherein it was found that the land which the complainant has alleged to be in possession of accused persons is the land of cremation ground of the village, which belongs to Gram Panchayat. Since the cremation ground has been shifted outside the village, villagers have divided this land amongst them. The land on which Gurdial Singh took possession abuts opposite to the backside gate of the house of complainant meaning thereby that no land of the complainant was ever trespassed by the accused persons. Relying upon this Report, police preferred cancellation report of FIR No. 45 dated 4.10.2004 under Section 447, 34IPC at PS Cantt, Bathinda. Further the version of complainant is not trustworthy because the complainant during his cross examination recorded on 28.11.2010 stated that he does not know when the land was distributed in the year 1978, but there is no record pertaining to said distribution. The presence of other eye witness Yadwinder Singh appears to be doubtful, as he is resident of village Chughe Kalan, which is at a distance of about 40/45 kilometer from Bhucho Mandi. He explained that he had come to Bhucho for taking medicine with his friend Bhola Singh but said Bhola Singh has not been examined in the Court. Even the complainant has also not got recorded their names in the complaint being the eye witness nor even cited them as witness. Further this witness has admitted during his cross examination

that when they reached at the spot 10-12 feet wall was lying demolished which was 4 feet in height. The complainant or this witness have not placed on record any photographs showing the demolished wall. CW 3 Jaggar Sinigh has not deposed anything to the effect that accused persons have demolished the wall or not. Rather he deposed that when he reached at the spot, the wall was lying demolished and the occurrence was told to him by complainant. Thus evidence is nothing but a hearsay.

12. In view of the aforesaid discussion, when the version of complainant suffers from embellishment and infirmities, his sole testimony cannot be relied upon to record conviction of the accused persons.”

Feeling aggrieved, the complainant had filed an appeal before the Court of Sessions but the same was withdrawn. Thereafter, the complainant approached this Court seeking Special Leave to appeal. Since there was a delay of 865 days in approaching this Court, the application under Section 5 of the Limitation Act for condonation of delay has been filed.

I have heard learned counsel for the applicant besides going through the record.

In the application under Section 5 of the Limitation Act it is contended that the delay took place since the complainant had approached the Court of Sessions by way of filing the appeal. However, in view of the judgment by the apex Court in “M/s Tata Steel Ltd. Vs. Atma Tube Products Ltd., 2013(2), Recent Criminal Reports, 1005” it was withdrawn on 02.06.2014. The complainant was aware of the fact that he was required to approach this Court on 18.3.2015 but then he has done so lately by 9 months thereafter. No justifiable reason is given for that much delay.

Therefore, I do not see any reason to condone the delay. The application is

dismissed.

The present petition/application is doomed for failure on account of it being time barred. However, on merits also, I find that the judgment passed by the trial Magistrate is well reasoned, based on proper appraisal, appreciation of evidence and correct interpretation of law. There is no illegality or infirmity with the judgment which might have called for such leave to appeal to the complainant. Therefore the said petition/application stands dismissed.

(H.S. MADAAN)
JUDGE

February 23, 2018

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No