

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

CRM No.A-755-MA of 2017 (O&M)

Date of decision: October 30, 2018

Karnail Singh

...Applicant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.S.S.Sahu, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Karnail Singh has filed this application under Section 378(4) read with Section 482 Cr.P.C. seeking permission for leave to appeal against State of Haryana and other respondents, challenging the impugned judgment dated 14.02.2017 passed by learned Addl. Sessions Judge, Fatehabad, vide which appeal filed by accused-respondents Kartar Singh, Mukhtiar Singh, Kulbeer Singh, Mahender Singh, Baljeet Singh against the judgment of conviction dated 24.04.2013 and order of sentence dated 27.04.2013 passed by learned Sub Divisional Judicial Magistrate, Tohana, was allowed and they were acquitted of the charges framed against them, whereas appeal filed by accused-respondents Satpal, Satnam, Saranjeet and Jasmeet Kaur was partly allowed and they were acquitted of the charges framed under Section 392 and 506 IPC and upheld their

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Karnail Singh filed a complaint against accused Satpal Singh, Satnam Singh, Mahender Kaur, Kartar Singh, Mukhtyar Singh, Kulbir Singh, Mahender Singh, Saranjeet Singh, Baljeet Singh and Jasmeet Kaur under Sections 323, 324, 452, 506, 392 and 148 read with Section 149 IPC. The brief averments of the complaint as noted down by learned SDJM, Tohana, are as under:-

“2. Brief facts of the present complaint are that the marriage of accused no.10 Jasmeet Kaur (who is the sister of accused no.1 and 2, daughter of accused no.3, niece of accused no.4 to 7 and cousin of accused no.8), had been solemnized with Rajwinder Singh son of the complainant on 11.02.1993. Two sons namely, Gurpreet Singh and Saravjeet Singh were born out of the aforesaid wedlock. After the marriage, Rajwinder Singh got separated from the complainant and started residing in a separate house alongwith accused no. 10. Marriage of Ranjeet Kaur daughter of complainant, was proposed to be solemnized on 02.09.2006. However, defendant no. 10 was not willing that her husband Rajwinder Singh should join the marriage of his aforesaid sister, as such, she started raising dispute in her matrimonial home. In the month of August 2006, she also threatened that if Rajwinder Singh joins the marriage of his sister, she would leave the matrimonial home and would get the family members of Rajwinder Singh implicated in some false case. She was tried to be convinced by the complainant and his family members but of no avail and she inform her brothers at village Himmatpura about the aforesaid.

3. That on 21.08.2006 at about 10 a.m., accused no.1 to 8 visited the house of the complainant, accused no.1 and 2 were having lathies in their hands, whereas, accused no.8 was having the balli. The other accused were empty handed at that time. They threatened the complainant that they would take accused no.10 to her parental home and would not allow her to stay any longer in her matrimonial home, as Rajwinder Singh wanted to attend the marriage of his sister against the wishes of Jasmeet Kaur (accused no.10). When the complainant resisted, the accused physically assaulted him. Accused no.1 had given the lathi blow on the forehead of the complainant. Accused no.8 inflicted a Balli blow on the right

foot of the complainant, whereas the remaining accused had inflicted the brick blows to the complainant on both of his hands and shoulders. Accused no.2 had inflicted a lathi blow on the forehead of Ranjeet Kaur, whereas accused no.3 and 10 caught hold of Ranjeet Kaur from her hair and put on the ground and thereafter, they gave fists blows to Ranjeet Kaur. Accused no.1 and 2 had also given fist blows to the complainant and had thrown away his turban. Thereafter, accused no.10 who had also joined the assailants by then, took her associates inside a room and all the accused had taken out gold chain (weighing about 12 grams), a pair of gold ear rings (weighing one tola) and two gold rings (weighing two tolas) silver pajeb apart from a cash of Rs.1,00,000/-, which had been kept by the complainant in a trunk for the marriage expenses. Thereafter, they threatened the complainant with dire consequences. When the assailants physically assaulted the complainant and his daughter, Rajwinder Singh and Gurpreet Singh had also reached at the spot and they are eye witness to the occurrence in question. The matter was reported to the police. The police obtained the thumb impressions of the complainant on blank papers. However, except to register the DDR No.22 dated 21.8.2006 the police did not take any action against the complainant.”

Accused No.1 to 3, 8 and 10 were summoned under Sections 323 and 506 read with Section 34 IPC. Then the summoning order was challenged and all the accused were summoned for commission of offence under Sections 392, 323, 324, 452, 506, 148 and 149 IPC. On the basis of pre-charge evidence, the accused were charge-sheeted under Sections 148, 323, 452, 506 and 392 read with Section 149 IPC, to which they pleaded not guilty and claimed trial.

At the close of complainant evidence, accused were examined under Section 313 Cr.P.C. They were confronted with the evidence of the complainant and they denied all the incriminating evidence against them and pleaded their innocence and false implication. In defence, accused examined DW-1 Karnail Singh.

Learned SDJM, Tohana, after appreciating the evidence,

convicted the accused-respondents under Sections 323, 392, 452, 506 and 148 read with Section 149 IPC and sentenced them to undergo rigorous imprisonment for a maximum period of two years along with fine under each Section. An appeal was filed by accused-respondents and learned Addl. Sessions Judge, Fatehabad, accepted the appeal filed by Kartar Singh, Mukhtiar Singh, Kulbeer Singh, Mahender Singh, Baljeet Singh vide impugned judgment dated 14.02.2017 and acquitted them and partly allowed the appeal filed by Satpal, Satnam, Saranjeet and Jasmeet Kaur by acquitting them of the charges under Section 392 and 506 IPC and by upholding their conviction 148, 323 and 452 read with Section 149 IPC. The complainant filed revision petition for enhancement of the sentence imposed upon the accused-respondents, which was dismissed by above-said judgment dated 14.02.2017.

Aggrieved from the judgment dated 14.02.2017 passed by learned Addl. Sessions Judge, Fatehabad, present application seeking to leave to appeal has been filed.

I have heard learned counsel for the applicant and have gone through the record, especially the judgments passed by the Courts below.

The perusal of the record shows that occurrence took place on 21.08.2006 and the complaint was filed on 02.12.2006 i.e. after a long delay. It is settled law the delay in reporting the matter to the police or filing the complaint, itself is not fatal but the Court is to appreciate the evidence more cautiously and carefully in the cases of delay, to know whether this delay has been used for implicating more persons of a family and concocting a false version etc. In the present case, Rajwinder Singh,

were residing separately but in the same house. It is in the complaint that Ranjeet Kaur, daughter of the complainant was to be married and Jasmeet Kaur was pressing Rajwinder Singh not to contribute in the marriage and even for not attending the marriage but when this was asked to PWs as to where Ranjeet Kaur was going to be married, none of the witness could give specific reply.

Furthermore, learned lower Appellate Court after appreciating the evidence, found that accused No.1 and 2 were having lathies in their hands whereas accused No.8 was having the balli. The other accused were empty handed at that time, as per complainant version. The Court held that no such application, given to the police by the complainant, has been placed on the record nor any report or DDR etc. was placed on record to explain the delay. As regarding offence under Section 392 IPC, learned lower Appellate Court held that, PW-1 Karnail Singh, PW-2 Ranjeet Kaur, PW-3 Gurpreet Singh and PW-4 Rajwinder Singh have stated in their evidence that accused took away jewellery as well as ₹1 lakh from the trunk lying in the room of the house of complainant Karnail Singh. The Court also held that except oral evidence, there is nothing on the record that on the day of occurrence, the complainant was having jewellery and ₹1 lakh. The bill Mark-A has not been proved as per law. Similarly, it was stated by complainant that he borrowed ₹1 lakh from Balkar Singh and also placed on file document Mark-B but neither Balkar Singh was examined nor any signatory to the document Mark-B was examined and Mark-B was also not proved as per law. Learned trial Court by discussing all these facts, acquitted accused Kartar Singh, Mukhtiar Singh, Kulbeer Singh, Mahender Singh and Baljeet Singh of the charges levelled against them and acquitted

accused Satpal, Satnam, Saranjeet and Jasmeet Kaur of the charges under Sections 392 and 506 IPC.

From perusal of the reasonings given by learned Addl. Sessions Judge, Fatehabad after re-appreciating the evidence, I find that the findings given by learned lower Appellate Court while acquitting the accused-respondent are correct, as per law and evidence. The evidence has been re-appreciated in right perspective. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below. In no way, the findings given by learned Addl. Sessions Judge, Fatehabad, can be held as perverse or against the law.

In view of the above discussion, I find that the impugned judgment dated 14.02.2017 passed by learned Addl. Sessions Judge, Fatehabad, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out to grant permission for leave to appeal and therefore, the present application stands dismissed.

October 30, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No