

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.14932 of 2015
and
Criminal Misc. No.A-795-MA of 2015

.....

Date of decision:28.11.2018

Om Parkash

...Applicant

v.

Bhojraj and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Mukesh Yadav, Advocate for the applicant.

Ms. Bhavna Grewal, Advocate for Mr. S.K. Yadav, Advocate
for respondents No.1 to 6.

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Inderjit Singh, J.

Cr. Misc. No.14932 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 5 days in filing the appeal and application seeking leave to appeal is condoned.

The criminal miscellaneous application is allowed.

Cr. Misc. No.A-795-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Bhojraj and others-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 24.2.2015 passed by learned Judicial Magistrate Ist Class, Mahendergarh, whereby the complaint filed under Sections 148,

149, 323, 341, 342, 447 and 506 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 accompanying appeal is being filed against the judgment dated 24.2.2015 passed by learned Judicial Magistrate Ist Class, Mahendergarh, which is likely to succeed on the grounds mentioned therein. It has been stated that the applicant is having *prima facie* good case. The balance of convenience is in his favour. In case leave to appeal is not granted it will cause miscarriage of justice to the applicant. 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 Om Parkash-complainant filed complaint against Bhojraj, Ram Kumar, Umed, Bala, Sunita and Sumitra for the offences under Sections 148, 149, 323, 341, 342, 447 and 506 IPC. The brief facts of the case as noted down by learned Judicial Magistrate Ist Class, Mahendergarh, in his judgment dated 24.2.2015 are as under:-

“Brief facts of the complaint are that the complainant Om Parkash and accused persons had joint well and they were residing in houses constructed near this well. A house was constructed in rectangle No.59, Kila No.9/3 and the parties were co-sharer to the extent of ½ share each and the accused persons had raised construction in area more than their share and the complainant had raised construction on his share and had also left some vacant land and this vacant land was being used by complainant as a chowk. On 16.5.2009 at about 8/9

A.M. when complainant and his wife were present at home then accused Bhojraj alongwith remaining accused persons reached his house with a common intention and the accused persons were armed with lathis, jellies, stones etc. and they laid down one cot in chowk of complainant. Earlier on 15.5.2009 they had placed a water tank in same area and they wanted to take forcible and illegal possession on land of complainant and they wanted to construct a platform in the same. When the complainant had stopped them and had threatened to go to police station then the accused persons had started pelting stones on his house and had stopped him from going to police station. On 16.5.2009 at about 1 P.M., complainant and his wife Bimla came out of their house for going to police station, then Bhojraj, Ram Kumar and remaining accused persons stopped their way. Bhojraj attacked Bimla wife of complainant with a lathi on her left hand. Ram Kumar gave a lathi blow on her left knee and Umed gave a lathi blow on her left shoulder and when complainant tried to rescue her, then Umed attacked him with lathi on his waist. Bala, Sunita and Sumitra gave slaps and fist blows to Bimla and when they raised hue and cry, then Hanuman sons of Prahlad rescued them, thereafter the accused persons started pelting stones on house of complainant and they obstructed their way and did not allow them to go to police station and they also threatened them with dire

consequences. At about 5 P.M., somehow complainant and his wife came out of their house and managed to reach police station Satnali and got recorded DDR No.17 dated 16.5.2009, however, the accused persons were already present there and the police colluded with them, therefore a wrong DDR was lodged and all allegations were not mentioned in it. Complainant and his wife were medico legally examined in PHC, Satnali and X-ray was also conducted at General Hospital, Mahendergarh but no action was taken against the accused persons. The complainant also moved an application before the Superintendent of Police, Narnaul but no action was taken against them. Hence, the complainant filed the present complaint.”

In pre-charge evidence, the complainant examined Om Parkash as CW-1, Hanuman Singh as CW-2, EHC Stabber Singh as CW-3, Hanuman Singh as CW-4, HC Anil Kumar as CW-5, Dr. Yogender Kumar as CW-3 (again marked as CW-3) and Bimla Devi as CW-4 (again marked as CW-4).

On finding *prima-facie* case against accused Bhojraj, Ram Kumar and Umed, they were charge-sheeted for the offences under Sections 323 and 506 IPC, to which they pleaded not guilty and claimed trial.

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

After appreciating the evidence, the accused were acquitted by the learned Judicial Magistrate Ist Class, Mahendergarh, vide judgment dated 24.2.2015. 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 case.

Ms. Bhavna Grewal, learned Advocate for Mr. S.K. Yadav, learned Advocate has appeared on behalf of respondents No.1 to 6 and contested this application.

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

A perusal of the record shows that in the complaint itself, the complainant states that he has got registered the DDR in the Police Station, but the Police has colluded with the accused party and a wrong DDR was lodged and all allegations were not mentioned in it, which means the first version given in the DDR the complainant himself is not relying upon it. The first DDR was recorded on 16.5.2009, but the complaint has been filed on 4.9.2009. If the wrong DDR was registered, then the complainant should have filed the complaint at the earliest, but there is unexplained long delay in the present case. Furthermore, I find that the learned trial Court has appreciated the evidence on record and by giving the benefit of doubt acquitted the accused-respondents.

From the record, I find that the findings given by the learned trial Court are correct as per evidence and law. The evidence has been

appreciated in right and proper perspective. 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 statement of CW-3 Dr. Yogender Kumar shows that only one injury has been found on the person of Om Parkash and no sign of external injury was found. The doctor also stated that kind of weapon and probable duration of injury cannot be commented. Further, three injuries are stated to be found on the person of Smt. Bimla Devi, but out of these three, no external injury was seen in case of two injuries and the third injury is only bruise. If 5-6 persons will come along with Lathis Jellies, stones etc. they will not cause such type of injuries. Furthermore, the complainant himself has stated in his statement that the Police recorded DDR No.17, but did not read over the same to him. He also admitted in cross-examination that the disputed land has not been partitioned by any Court of law. The Court below further found that Om Parkash stated that Sumitra was armed with Jelly and Bala and Sunita were having stones. Bala, Sunita and Sumitra have not been summoned in the present case. CW-4 Bimla Devi admitted that one criminal case is pending against them at the instance of the accused persons. Hanuman Singh-witness is co-accused in the criminal case filed by the accused persons.

A perusal of the record further shows that cross-case is also pending against the complainant and his family members. There is no explanation regarding the injuries to the accused persons. It looks that the

[7]

complainant has not mentioned the correct facts in the complaint and has concealed the genesis of the occurrence. The injuries on the accused persons have not been explained. Keeping in view the above facts, I find that the findings given by the learned trial Court are correct as per evidence and law. 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.

November 28, 2018.

(Inderjit Singh)
Judge

hsp

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