

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

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**CRM-A-1408-MA-2018
Date of decision: 09.12.2019**

Palwinder Singh

.....applicant

Versus

Jagir Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Sandeep S. Majithia, Advocate for the applicant.

ARUN KUMAR TYAGI, J (ORAL)

The applicant has filed the present application under Section 378(4) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") for grant of special leave to appeal.

Briefly stated, the facts giving rise to the filing of the present application are that the applicant filed complaint bearing Crl. Case No.64, CIS No. Comi/18/2015 titled as 'Palwinder Singh Vs. Mandeep Kaur and others' under Sections 452, 323, 324, 499, 506, 341, 342 and 427 of the Indian Penal Code, 1860 (for short, "IPC") against Mandeep Kaur, Jagir Singh, Sukhpreet Singh, Parkash Kaur, Raj Kaur, Lakhbir Singh, Balwinder Kaur and Prabhjot Singh. In the complaint, the applicant alleged that on 08.03.2015 at about 11:00 A.M., when he came back from his fields and slept over his bed and his wife was doing household work, the above-said accused forcibly entered into his house. Accused Jagir Singh and Lakhbir Singh told the complainant that he helped Rupandeep Singh. When the complainant stood up from bed then accused pushed him and he fell down on the ground. When his wife tried to save his life, accused Mandeep Kaur, Parkash Kaur, Raj

Kaur and Balwinder Kaur started beating her and they told her that her husband ruined their life. Accused Sukhpreet Singh and Prabhjot Singh started beating him with their weapons. Thereafter, they raised hue and cry '*maar ditta maar ditta*' and he called his son Gurpreet Singh on phone. His neighbours namely Balkar Singh and Jagroop Singh came on the spot. When his son came there, then the accused fled from the spot. He informed the police but police did not take any action.

Preliminary evidence of the complainant was recorded and accused were summoned to face trial for commission of offences punishable under Sections 452, 323, 506 read with Section 34 of the IPC.

Pre-charge evidence of the complainant was recorded who examined himself as CW1, Balwinder Singh as CW2 and Balkar Singh as CW3.

Charges were framed against the accused and the witnesses were further examined/cross-examined. On completion of the after charge evidence, statements of accused under Section 313 of the Cr.P.C. were recorded wherein they stated that they were innocent and had been falsely implicated in the case. In their defence evidence, the accused examined Amanpal Singh as DW1, Mandeep Kaur as DW2 and Daljinder Singh as DW3.

On completion of trial, learned Sub Divisional Judicial Magistrate, Khadur Sahib held that the complainant had miserably failed to prove the charges against the accused and accordingly acquitted them vide judgment dated 18.12.2017.

Feeling aggrieved, the complainant has filed the present

application under Section 378 (4) of the Cr.P.C. for grant of special leave to appeal against the same.

I have heard learned counsel for the applicant and perused the relevant record.

Learned counsel for the applicant has argued that the trial Court has disbelieved the cogent and positive evidence proving complicity of the accused in the crime on the basis of the bald statement of the accused persons that village Kaziwal does not fall in the way of village Kang to Jandiala Guru and there is a matrimonial discord between the close relative of the applicant and Mandeep Kaur. The trial Court has not properly appreciated the evidence. Impugned judgment suffers from material illegality. Therefore, the application may be allowed and leave to appeal against the same may be granted.

On consideration of the submissions made by learned counsel for the applicant and perusal of the record, I am of the considered view that the application is devoid of any merit and is liable to be dismissed.

In *Chandrappa and others Vs. State of Karnataka : 2007(2) RCR (Criminal) 92* Hon'ble Supreme Court summarised the general principles regarding powers of appellate Court while dealing with an appeal against order of acquittal which are reproduced as under:-

- “(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;
- (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

- (3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.
- (4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
- (5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

In the present case the complainant while appearing as CW1 deposed as to the accused with common intention having entered into his house and caused injuries to him and his wife and criminally intimidated them. However, the complainant did not get him and his wife Balwinder Kaur medically examined. The complainant had alleged that he reported the matter to the police but he did not produce any application moved to the police. CW2 Balwinder Kaur and CW3 Balkar Singh deposed in akin terms but CW2 Balwinder Kaur is an interested witness while CW3 Balkar Singh was not resident of the same village and was not living in the neighbourhood of the complainant and his presence on the spot was wholly unnatural. CW3 Balkar Singh did not even know the names of the accused and could not tell the same even at the time of his examination. The complainant did

not examine his son Gurpreet Singh as witness in the case despite opportunity. In the facts and circumstances of the case, testimony of the complainant and his witnesses has been rightly disbelieved by learned Judicial Magistrate First Class, Khadur Sahib.

In these facts and circumstances of the case, the application fails to make out any arguable case for grant of special leave to appeal and is devoid of any merit. Therefore, the application is dismissed and special leave to appeal is declined.

09.12.2019

Vinay

(ARUN KUMAR TYAGI)
JUDGE

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