

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-130-MA of 2016

.....

Date of decision:21.02.2019

Murti Devi

...Applicant

v.

Satish Kumar and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Ashok Kumar Khubbar, Advocate for the applicant.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Satish Kumar and Sonu-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 17.12.2015 passed by learned Judicial Magistrate Ist Class, Panipat, whereby the complaint filed under Sections 323, 325, 452, 506 and 34 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 17.12.2015 passed by learned Judicial Magistrate Ist Class, Panipat, which is likely to succeed on the grounds mentioned therein. It has been stated that there are moot points involved in the present appeal as the accused have been acquitted ignoring the medical evidence as well as statement of two eye witnesses. It has been stated that there are sufficient grounds for the conviction of the accused/

respondents. 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 Murti Devi-complainant filed complaint against Satish Kumar and Sonu for the offences under Sections 323, 325, 452, 506 and 34 IPC. The brief facts of the case as noted down by learned Judicial Magistrate Ist Class, Panipat, in his judgment dated 17.12.2015 are as under:-

“Brief facts of the complaint as averred by the complainant are that complainant is resident of Bhagat Nagar, Tehsil Camp, Panipat. Accused No.1 Satish the employee of Haryana Police and is posted at Panipat. The complainant has a pet dog for their safety, whom the complainant unties only during night hours. The accused No.1 has earlier also threatened the complainant and his son either to sell the said pet dog otherwise the complainant will have to face dire consequences. On 10.6.2010 Monu, son of complainant returned after a walk with his pet dog in the evening, tied the pet dog at home and went out for his some work. At around 10.30 P.M. both the accused persons armed with dandas forcibly entered the house of the complainant and started beating the dog. The complainant raised alarm, on which Rama Nand son of Suraj Lal and Sukhvinder son of Ram Dhari came at the spot and Satish gave a danda blow on the face of complainant, due to which one of her teeth of lower jaw broke. At this pet dog broke his chain and attacked Satish accused No.1 to save the complainant.

Thereafter, the accused persons fled away but while going away threatened to kill complainant and her dog. Thereafter Shamsheer Singh brought the complainant to Civil Hospital, Panipat for treatment where she was medico legally examined and was referred to the Dental Surgeon. The complainant approached the Dental Surgeon, who conducted the X-ray on the lower teeth. Thereafter, complainant moved application to the Police Station, City, Panipat but no action was taken. But, the police has registered a false case against Sonu son of complainant vide FIR No.597 under Sections 323, 289, 325 Indian Penal Code. Hence, the present complaint has been filed.”

The accused were summoned for the offences under Sections 323, 325, 452, 506 and 34 IPC. In pre-charge evidence, the complainant examined herself as CW-1, CW-2 Sukhvinder, CW-3 Ramanand, CW-4 Dr. Karamveer Chopra and CW-5 Dr. Naveen Jindal and the pre-charge evidence was closed. On finding a *prima facie* case, accused No.1 and 2 were charged-sheeted for the offences punishable under Sections 323, 325, 452, 506 read with Section 34 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 their false implication. However, no evidence was led by the accused in their defence.

After appreciating the evidence, the accused were acquitted by the learned Judicial Magistrate Ist Class, Panipat, vide judgment dated 17.12.2015. Aggrieved from this judgment of acquittal, the present appeal along with application seeking leave to appeal has been filed by the complainant.

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

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. No illegality has been pointed out.

A perusal of the record shows that as per the complainant's version a dang blow had been given to the complainant by Satish Kumar on the face of the complainant due to which one of her teeth of lower jaw had broken. A perusal of the record shows that there is no external injury mark on the face of the complainant as per the doctor. The complainant was also suffering from the disease of pyorrhea and her teeth might have fallen due to the disease. There was no corresponding injury present over her lips or gums. The witnesses though deposing regarding the occurrence, but are interested witnesses as held by the learned Judicial Magistrate Ist Class, Panipat. The case of the complainant looks unnatural that an injury has been given by the accused but the complainant has not received any injury

on the lips and gums or any part of the face.

Therefore, from the above, I find that the learned Judicial Magistrate Ist Class, Panipat, has rightly acquitted the accused-respondents. 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.

February 21, 2019.

(Inderjit Singh)
Judge

hsp

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