

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

CRM No.A-1204-MA of 2017 (O&M)

Date of decision: February 08, 2019

Rajesh Kumar

...Applicant

Versus

Jang Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.K.Rana, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Rajesh Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Jang Singh and other respondents, challenging the judgment dated 28.02.2017 passed by learned Judicial Magistrate Ist Class, Ambala, whereby accused-respondents were acquitted.

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, complainant Rajesh Kumar filed a complaint against accused Jang Singh, Baldev Singh, Prem Singh, Parwinder Singh, Ujjawal Singh, Malkiat Singh, Narain Singh and Gurbachan Singh under Sections 148, 149, 447, 427 and 506 IPC. The brief averments of the

are as under:-

“The present complaint has been filed by the complainant Rajesh Kumar under Sections 148, 149, 447, 427, 506 of IPC in which it has been submitted that the father of the complainant Mohan Singh and his brother having lawful ownership and peaceful possession of the land bearing Khasra No.2813 measuring 4 bighas situated in village Bihta, Tehsil Barara, District Ambala. His father Mohan Singh and his brother filed a civil suit titled as Stapal etc. Versus Spattar Singh etc, which was decreed in their favour vide judgment and decree dated 20.02.1999. In execution of the said judgment and decree, possession of the said land was delivered to his father and his brother vide report dated 01.10.2010 of Field Kanungo and the said execution was fully satisfied vide order dated 04.10.2010 and since then, his father and family members are in peaceful and lawful possession of the said khasra number. In this Khasra number, father of complainant and his brother sown wheat crops. The accused persons tried to interrupt in the peaceful and lawful possession over the said khasra number. The father of the complainant and his brother filed a civil suit for permanent injunction qua the khasra no.2813 and an injunction order was passed against the accused persons, vide order dated 04.04.2012. The family members of the complainant again sown the crops of Charri in the said khasra number which is still standing there. On 15.06.2012 at about 9.00 AM, the complainant went to his fields, where he witnessed that all the accused persons armed with deadly weapons already entered into the land of the complainant and were destroying the crops of Charri by ploughing the field. The complainant asked the accused persons not to destroy the said crops but the accused persons did not adhere to the requests of the complainant and ran towards the complainant with Axes, Gandasis and Sticks in their hands and further threatened the complainant of dire consequences. The accused persons destroyed the said charri crops of complainant and caused the loss of Rs.2000/-. When the complainant made hue and cry, Kiran Pal and Randeep Singh resident of village Bihta came at the spot. The father of complainant lodged a complaint before the local police and DDR No.14-A dated 17.06.2012 was lodged by the police in this regard. On 23.07.2012, all the accused persons came into their field and threatened to vacate the same. On raising voice, accused persons fled away from the spot by giving warning to eliminate them. In this manner, the accused persons be punished in accordance with law.”

On the basis of preliminary evidence, all the accused were

summoned to face trial under Sections 148, 447, 427 read with Section 149 IPC. In pre-charge evidence, the complainant examined CW-1 Kiran Pal, CW-3 EASI Sukhdev Singh, examined himself as CW-2 and tendered documents Ex.C1 to Ex.C8. Finding prima facie case, the accused were charge-sheeted under Sections 148, 447 and 427 read with Section 149 IPC, to which they pleaded not guilty and claimed trial. In after charge evidence, no further cross-examination was conducted by learned counsel for the accused nor complainant examined any other witness.

At the close of complainant's evidence, the 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.

Learned JMIC, Ambala, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 28.02.2017.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

Lower Court record was also requisitioned.

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

From the record, I find that the alleged incident took place on 15.06.2012 but the complaint was filed on 17.08.2012 i.e. after delay of two months and there is no cogent explanation regarding this delay. Learned trial Court has discussed the statements of the PWs minutely. CW-1 Kiran Pal stated that on 15.06.2012, when all the accused persons were destroying

the *charri* crops of complainant and were beating him, he came at the spot

after hearing the noise. However, to the contrary, the complainant as CW-2, in his cross-examination categorically stated that he did not receive any injury in the alleged incident as none of the accused touched him. This discrepancy in the statements of CW-1 and CW-2 is a material discrepancy, which goes to the root of the case. It shows that CW-1 has not seen the occurrence that is why he has not corroborated the statement of the complainant, rather, has improved the version regarding beatings, which the complainant himself is denying. Another witness Randeep Singh, who is also stated to be eye witness, has not been examined. Therefore, the complainant has examined only one witness, who is discrepant on material point with the complainant.

Learned trial Court further held that complainant himself in his examination-in-chief as deposed that accused persons beaten him in the alleged incident, however, in his cross-examination, he denied the factum of any such beating at the hands of accused persons, which means that there are inconsistencies in the versions of CW-1 and complainant himself. Further, as per complainant, Kiran Pal along with Randeep Singh and Jaikaran Singh also came at the spot but said eye witnesses namely Jaikaran Singh and Randeep Singh have not been examined by the complainant. Moreover, the complainant has stated that he knew names of all the accused persons but he failed to identify them when three accused persons were shown to him, which also creates doubt in the complainant's version. Learned Magistrate has relied upon Ex.D1, khasra girdawari, as per which, from the year 2010 to 2014, *charri* crops were never sown by complainant's family in those khasra numbers. Learned trial Court held that complainant failed to prove his case beyond reasonable doubt against the accused

persons.

The perusal of the findings given by learned JMIC, Ambala, shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. At the time of arguments, nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the trial Court. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned trial Court. The findings have been given by correctly appreciating the evidence in right perspective and accused-respondents have been rightly acquitted.

In view of the above discussion, I find that the impugned judgment dated 28.02.2017 passed by learned JMIC, Ambala, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

February 08, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No