

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1092-MA of 2015

.....

Date of decision:17.01.2019

Hans Raj

...Applicant

v.

Satish Kumar and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Gourav Jain, 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 Roshan Lal-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 20.03.2015 passed by learned Judicial Magistrate Ist Class, Kaithal, whereby the complaint filed under Sections 188, 427, 430, 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 20.03.2015 passed by learned Judicial Magistrate Ist Class, Kaithal, which is likely to succeed on the grounds mentioned therein. It has been stated that the balance of convenience is in favour of the applicant and the applicant has a good case on merits. 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 Hans Raj-complainant filed complaint against Satish Kumar and Roshan Lal for the offences under Sections 188, 427, 430, 447 and 506 IPC. The brief facts of the case as noted down by learned Judicial Magistrate Ist Class, Kaithal, in her judgment dated 20.03.2015 are as under:-

“Brief facts are that the complainant is a handicapped person and is owner in possession of land measuring 23 kanal entered at khewat No.1324 khatoni No.151 rect. No.105, killa No.17/2, 18/2, 23/1, 23/2, 24/1, 24/2 according to jamabandi for the year 2000-2001 relating to village Pundri Tehsil and District Kaithal. This land fell to the share of complainant in an oral family settlement which was later on reduced into writing on 28.11.1998. The accused had been threatening to take forcible possession of the above said land from the complainant though they had no right, title or interest in the same, so the complainant had to file a civil suit No.84/2008 titled as Hans Raj Vs. Des Raj etc. against the accused in the Court of learned Civil Judge (Senior Division), Kaithal on 17.04.2008 and vide order dated 21.04.2008 the Court directed the parties to the suit to maintain status-quo regarding possession and alienation qua the above said land. The accused No.1 & 2 were well within the knowledge of the order dated 21.04.2008 from the very beginning as the same was passed in presence of accused and their counsel.

It has been further alleged that the complainant after

harvesting the Rabi crop 2008 sowed the Jawar crop in this land. On 07.05.2008 the accused No.1 & 2 in violation of the lawful order dated 21.04.2008 passed by the Court at about 8.30 p.m. trespassed the land along with 50 other persons armed with lathi, gandasi, revolver in their hands and destroyed the Jawar crop of complainant by cultivating the land with the help of tractor. The accused and the other 50 persons also threatened to kill the complainant and his son Virender in case they shall not withdraw the civil suit filed by the complainant against the accused. At the time of occurrence one Rajbir son of Inder Singh resident of village Ahun was also present there. The accused and other 50 persons accompanied with the accused called upon the complainant and his son with the bad names and threatened to shot them in case they shall create any hindrance in cultivating the land by the accused. The accused also destroyed the khal/water channel for the cultivation of the Jawar crop of the complainant and has also destroyed the green fodder of the animal of the complainant. The matter was reported to the police of Police Station Pundri on 08.05.2008 and also inspected the land of complainant but since the accused are influential persons, so the police refused to take any action against them. Hence, this complaint.”

On finding a *prima facie* case, charges against accused were framed for the offences under Sections 427, 430, 447 and 506 IPC, to which they pleaded not guilty and claimed trial.

The complainant examined himself as PW-1 and also examined PW-2 Virender Kumar and PW-3 Ram Pal and closed his evidence.

At the close of complainant's evidence, the statements of the accused were recorded under Section 313 Cr.P.C. and 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, Kaithal, vide judgment dated 20.03.2015. 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.

A perusal of the record shows that the parties are into litigation since so many years even before filing the present complaint. As per the complainant, the land fell to the share of the complainant in an oral family settlement which was later on reduced into writing on 28.11.1998 and the photo copy of the oral settlement was placed on record as Ex.C.2. The learned trial Court has rightly held that photo copy Ex.C.2 is not proved as

per law. No witness to the settlement has been brought to prove this family settlement and writing Ex.C.2. It looks that no permission for leading secondary evidence has been taken. Admittedly, the property was joint of the complainant and his brother and one of the brothers of the complainant, namely, Des Raj sold the disputed land to the wives of the accused, namely, Renu and Santro. The complainant also admitted during cross-examination that in the papers also aforesaid Santro and Renu are owners of the land in dispute. Further, it is the case of the complainant that the land was in their possession but a perusal of the record shows that the complainant has filed the execution for getting possession and prayed that warrants of possession be issued. If the complainant is in possession, then as to why he is filing execution for taking possession. There is nothing in the complaint that the possession was taken by the accused from the complainant. After the purchase of the land, the wives of the accused also become co-sharers in the joint 'Khata'. Family settlement has not been proved on the record and the exclusive possession of the complainant was not proved on the record beyond a reasonable doubt.

From the perusal of the record, I find that a reasonable doubt exists in the prosecution version and the learned trial Court 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.

January 17, 2019.

(Inderjit Singh)
Judge

hsp

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