

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 237

Criminal Miscellaneous No.A-376-MA of 2016
Date of Decision: May 20, 2019

Nirmal Singh

..... PETITIONER

VERSUS

Kabal Singh & others

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE RAMENDRA JAIN**

. . .

PRESENT: - Mr. B.S. Jaswal, Advocate, for the applicant.

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Ramendra Jain, J (Oral)

CRM No.6271 of 2016

For reasons given in the application, delay of 534 days in filing the appeal is condoned.

Application stands allowed.

CRM No.A-376-MA of 2016

Briefly, the complainant – applicant claims himself to be in possession of shop allegedly constructed by him over Shamlat land of village Ghukewal by spending ₹ 2,50,000/-. He filed a complaint against the respondents under Sections 295-A, 323, 379, 380, 382, 452, 427, 506, 148, 149 IPC, Police Station Majitha/Jhander, on the allegations that respondent No.1, in order to carve out a passage to his fields from the land on which

applicant had constructed the shop, always wanted to demolish the demised shop. Applicant filed a civil suit to refrain the respondents from interfering into his possession over the demised shop which was decreed. The respondents – accused remained unsuccessful throughout as their appeal against the aforesaid judgment and decree was dismissed by the District Judge, Amritsar. Respondent No.2 son of Kabal Singh also filed a civil suit against applicant which resulted into dismissal. Consequently, on civil side, the respondents lost their case throughout. Applicant was declared in lawful possession of the demised shop. Despite that, respondents kept on interfering into the peaceful possession of the applicant over the demised shop. To get the demised shop vacated from the applicant, on 03.09.2009, respondents in connivance with each other, illegally trespassed the demised shop and started throwing material out from it. When the applicant refrained respondents – accused from doing so, respondents slapped him. When his wife came-forward to rescue her son, respondent No.2 also slapped on her face. The complainant filed the aforesaid complaint against four persons, wherein respondents including the Station House Officer, Police Station Majitha/Jhander were summoned. Thereafter, respondent No.5 and other co-accused, who were not impleaded as party, demolished the demised shop and extended threat of dire consequences to the applicant. The applicant approached the Station House Officer informing about the above incident, but he did not take any action.

After recording preliminary evidence, out of the 7 accused only 4 respondents were summoned under Section 323 read with Section 34 IPC. However, learned Magistrate dismissed the complaint vide judgment dated 02.07.2014. Thereafter, petitioner preferred an appeal which was

dismissed as withdrawn. Now the complainant has approached this Court by way of present application.

Learned counsel for the applicant contends that three civil court judgments have come in favour of the applicant declaring him in lawful possession of the demised shop. Therefore, the trial court has erred in not appreciating the civil court judgments in favour of the applicant, while acquitting the respondents. The impugned judgment rendered by the trial court is based on surmises and conjectures, because it has not given any valid reason for dismissal of the complaint, except that it was filed after one month of the incident which is not a valid ground to dismiss it, ignoring the postal receipts of moving different and repeated complaints during this period to the concerned SHO and other police authorities.

Having given thoughtful consideration to the submissions made by learned counsel for the petitioner, this Court finds no merit in the instant application for the following reasons.

The applicant did not produce certified copies of the alleged civil court judgments in his favour for the reasons best known to him. They were even never exhibited during trial. It is well settled that unexhibited documents cannot be considered in evidence. Therefore, the trial court has rightly not considered the alleged civil court judgments in favour of the applicant. There is no corroboration to the sole bald statement of the applicant that respondents alongwith 4/5 persons demolished his shop on 03.09.2009, after trespassing the same. Statement of wife of the applicant has rightly been ignored by the trial court in the absence of any independent witness, she being an interested witness. Petitioner even did not produce any photograph or document to impress this Court that the shop under his

possession was demolished by the respondents. Therefore, bald statement of the petitioner to this effect has rightly been discarded by trial court. In their statements under Section 313 Cr.P.C., all the respondents denied to commit any such offence alleged by the applicant.

I have gone through the impugned judgment and find no illegality or perversity in the same.

In view of the discussion made above, the instant petition is dismissed.

May 20, 2019
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(Ramendra Jain)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No