

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.2234 of 2015
and
Criminal Misc. No.A-138-MA of 2015

.....

Date of decision:04.02.2019

Swaran Singh

...Applicant

v.

State of Punjab and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. A.P. Kaushal, Advocate for Mr. Raj Karan Singh Brar,
Advocate the applicant.

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Inderjit Singh, J.

Cr. Misc. No.2234 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 1005 days in filing the present appeal along with application seeking leave to appeal is condoned.

The criminal miscellaneous application is allowed.

Cr. Misc. No.A-138-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against State of Punjab and others-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 9.2.2012 passed by learned Sub Divisional Judicial Magistrate, Phagwara, whereby the complaint filed under Sections 323, 324, 499, 500, 506, 120-B and 34 IPC has been dismissed and the

accused-respondents No.2 and 3 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 9.2.2012 passed by learned Sub Divisional Judicial Magistrate, Phagwara, which is likely to succeed on the grounds mentioned therein. It has been stated that the applicant has *prima facie* a very good case and balance of convenience also lies in his favour. It has, therefore, been prayed that this application be allowed and leave be granted to the applicant to file appeal.

The brief facts of the case as noted down in the judgment dated 9.2.2012 by learned Sub Divisional Judicial Magistrate, Phagwara, are as under:-

“The present complaint has been filed by complainant Swaran Singh against the accused Gurmit Singh and another under Section 323/324/499/500/506/120/34 IPC on the averments that the complainant is resident of Village Rampur Khalyan, Tehsil Phagwara and the accused are also residents of the said village. The complainant and accused are known to each other. The complainant is the member of Akali Party, while the accused belong to Ruling Congress Party and as such, the complainant has earned displeasure of accused during elections and other matters.

2. It is further averred that Surinder Singh son of complainant serving in the army was married at village Tajpur, District Hoshiarpur with Baljit Kaur daughter of Piara Singh.

After the marriage, Surinder Singh fell in bad company so complainant disowned Surinder Singh and his wife Baljit Kaur from moveable and immovable property of complainant. The relations between Surinder Singh and Baljit Kaur became strained and Piara Singh father of Baljit Kaur made a complaint before Village panchayat. The complainant was summoned by village panchayat for enquiry into complaint of Piara Singh on 24.11.2004, but Piara Singh did not turn and complainant was again asked to appear before panchayat on 25.11.2004. The complainant informed the panchayat repeatedly that the complainant has no concern with Surinder Singh and his wife Baljit Kaur as they already stand disowned and disinherited from the property of complainant and are living separately, but with mala fide intention and to cause insults and humiliations to the complainant, the accused Gurmit Singh started abusing the complainant by the name of mother and sister, while the accused Inderjit Singh stated in loud voice that the complainant is telling lie and should be taught a lesson and gave fists blow in the presence of members assembled there. It all happened in the presence of Kulwant Singh, Gurbaksh Singh, Numbardar Joginder Singh, Sarpanch Mukesh Kumar, Lady Panches Baldev Kaur and Nirmal Kaur. The accused not only caused mental torture, humiliation and bodily injuries to the complainant, but insulted the complainant in the presence of village panchayat and it stands confirmed in writing.

3. The complainant has further averred that the complainant made a report to the Local Police at Rawalpindi, but the Police did not take any action and evaded on one pretext or the other. Thereafter, the complainant sent complaints dated 6.12.2004 to Deputy Superintendent of Police, Phagwara and later to the Senior Superintendent of Police, Kapurthala, but no action was taken as the accused are influential persons belonging to Ruling Congress Party. Since the Police authority failed to take action, the complainant approached Hon'ble Chairman, Punjab State Human Rights Commission at Chandigarh, who also sent his complaint to Senior Superintendent of Police, Kapurthala vide their letter dated 5.4.2005 along with order of Hon'ble Commission dated 1.4.2005. However, the Police is not taking any action against the accused. The accused encouraged by inaction of Police are continuing to threat that complainant cannot do anything against them and accused will eliminate the complainant terming the complainant as their arch enemy. So the complainant is apprehending to his life and property from the accused. Hence the present complaint.”

On the basis of preliminary evidence, the accused were summoned under Sections 323 and 500 read with Section 34 IPC. Notice of accusation was served upon the accused under Sections 323 and 500 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the complainant examined himself as

PW-1, PW-2 Kulwant Singh, PW-3 Joginder Singh.

At the close of prosecution 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. They also examined DW-1 Head Constable Surat Singh.

After appreciating the evidence, the accused were acquitted by the learned Sub Divisional Judicial Magistrate, Phagwara, vide judgment dated 9.2.2012. 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.

A perusal of the record shows that, in no way, the findings can be held as perverse or against the evidence and law. 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. The learned trial Court has appreciated the evidence in right and proper perspective. The findings given by the learned trial Court are correct and as per evidence and law. The occurrence in the present case is stated to be of 25.11.2004, whereas the complaint is stated to be filed on 7.11.2005 after a long delay. Secondly, a perusal of the complaint nowhere shows as to how the defamation took place. The abusing or telling that the complainant is telling lie does not amount to defamation which lowered the reputation of the complainant in the eyes of near and dear ones.

Furthermore, the only allegation is that fist blows have been given. But

there are no specific allegations as to how many fist blows were given and by whom and on which part of the body. Secondly, there is no medico-legal examination in the present case nor any doctor has been examined.

Keeping in view the facts and circumstances of the present case, a reasonable doubt exists in the prosecution version. Therefore, the benefit of doubt always goes to the accused. Hence, the findings given by the learned trial Court acquitting the accused are correct as per evidence and law and the same have been given by the Court below after appreciating the evidence in right and proper perspective and the same do not require any interference from this Court and 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 04, 2019.

(Inderjit Singh)
Judge

hsp

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