

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-632-MA of 2016
Date of Decision: 10.7.2019

AmitApplicant

Vs.

State of Haryana and othersRespondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: - Mr. Nikunj Dhawan, Advocate for
Mr. M.S.Khillan, Advocate
for the applicant.

HARNARESH SINGH GILL, J.

CRM-10670-2016

This application is filed under Section 5 of Limitation Act, 1963 seeking condonation of delay of 89 days in filing the application under Section 378 (4) Cr.P.C. seeking leave to appeal.

For the reasons mentioned in the application, which is supported by an affidavit, the same is allowed. Delay of 89 days in filing the application under Section 378 (4) Cr.P.C., is condoned.

CRM-A-632-MA of 2016

1. Applicant Amit has filed the present application under Section 378(4) Cr.P.C. for grant of leave to appeal against the judgment dated 21.12.2015 passed by the Judge, Special Court, Karnal vide which accused/respondents No. 2 to 6 have been acquitted of the charges under Section 326, 506 read with Section 120-B of the Indian Penal Code, 1860 ('IPC' for short) and Sections 3 and 4 of Scheduled Castes and Scheduled

respondents No. 2 to 6 were convicted under Section 323 read with Section 34 IPC but they were ordered to be released on probation of good conduct under the provisions of Section 4 of Probation of Offenders Act, 1958.

2. Applicant-complainant had filed a complaint under Section 323, 324, 326, 506 and 120-B IPC and Section 3 and 4 of the Act alleging that on 10.9.2013, when he was sitting in the shop of Parveen Kumar, all the accused-respondents No. 2 to 6, armed with *dranti and lathis*, came there. Accused Madan and Mukesh raised lalkara "*Is Chamar dedh kamin ko Parveenka sath dene ka maja chakhado.*" On this, accused Shahabaj Khan gave *dranti* blow on the left shoulder of the complainant-applicant, upon which he fell down and all the accused-respondents No. 2 to 6 inflicted injuries on his person. Upon the noise having been raised by the complainant-applicant, many persons had gathered at the spot and saved him from the accused persons. The complainant-applicant was taken to General Hospital, Karnal where he was medico-legally examined. He remained admitted there from 10.9.2013 to 15.9.2013. The matter was reported to the police but no action was taken. It is further alleged that on 30.10.2013, when the applicant was going to Tehsil complex, all the accused-respondents had stopped him and accused-Jahagir Ali caught hold of him from the backside and hurled filthy abuses upon the applicant in the name of his caste and also gave him slaps and torn his clothes and had threatened to kill him in case any complaint was filed against them. After receipt of complaint, the same was referred to the police under Section 202 Cr.P.C. The learned Magistrate vide order dated 18.9.2014, summoned the accused-respondents to stand the trial for commission of offence under

Sections 323, 324 and 120-B IPC and Sections 3 and 4 of the Act. Thereafter, the case was committed to the Court of Sessions vide order dated 21.4.2015.

3. Charges were framed against the accused-respondents under Sections 120-B, 323, 326, 506 read with Section 120-B IPC and Section 3 and 4 of the Act to which they pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution had examined as many as 07 witnesses.

5. The applicant stepped into witness box as PW-1 and stated that his complaint (Ex. PA) to SHO, P.S. Indri and S.P. Karnal had not been entertained and that later, on the complaint (Ex. PB), an enquiry Ex. PC was conducted. The applicant identified the accused-respondents in the Court.

6. Similarly, PW-2 Parveen Kumar and PW-3 Pawan Kumar deposed that accused-respondents had uttered caste based words and had also given fist and slap blows to them and had specifically named the respondents.

7. Learned counsel for the applicant has argued that Amit Kumar, applicant/complainant had fully corroborated the version contained in the complaint filed by him and his version was further corroborated by the other prosecution witnesses. Learned counsel has laid stress on the evidence of PW-4 Dr. Munish Kumar that accused-respondents had inflicted injuries on the person of applicant Amit Kumar and had also abused him in the name of his caste.

8. We have heard the learned counsel for the applicant and have gone through the case file.

9. In the present case, a scuffle took place on 10.9.2013 in which

Parveen, Sunny and one Sumit, had caused injuries to the accused-respondents regarding which FIR No. 349 dated 11.9.2013 was lodged. The present case is a counter-blast to the said FIR.

10. Even as per the call details of the mobile phone of the applicant, he was found to be in Karnal on that day and not at the place of occurrence. Moreover, it was alleged that there were two incidents of beating and hurling remarks as to the caste of the applicant i.e. on 10.9.2013 and 30.10.2013. Regarding the first incident, alleged to have taken place on 10.9.2013, the applicant did not move any complaint which fact he had admitted in his cross-examination. However, regarding same incident dated 10.9.2013, FIR No. 349 dated 11.9.2013 (Ex. D1) was registered. The applicant did not mention regarding the said FIR in his complaint nor did he depose as such while appearing as PW-1. The accused-respondents had placed on record copies of MLRs in which Sahabaj Khan-respondent No. 4 and Jahagir Ali-respondent No. 6 had been reflected to have received serious injuries. Thus, the applicant had concealed the factum of FIR No. 349 dated 11.9.2013 Ex. D1. Hence, we find that the conduct of the applicant is not trustworthy.

11. We are not inclined to interfere with the judgment dated 21.12.2015 passed by Judge, Special Court, Karnal as the accused-respondents have been ordered to be released on probation of good conduct under the provisions of Section 4 of Probation of Offenders Act, 1958 for the period of six months along with compensation.

12. Learned counsel appearing for the applicant could not point out any material illegality or perversity in the impugned judgment. Nothing has been shown as to the misreading and misinterpretation of the evidence by

the learned trial Court, while passing the impugned judgment.

13. Consequently, the application seeking leave to appeal is dismissed. Leave to appeal is declined.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

July 10, 2019
Gurpreet

Whether speaking /reasoned : Yes
Whether Reportable : Yes