

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

CRM No.A-1589-MA of 2014 (O&M)

Date of decision: August 22, 2019

Sham Lal Kaushik

...Applicant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sanjay Vashisth, Advocate
for the applicant.

Mr.Karan Sharma, AAG, Haryana
for the respondent-State.

Mr.S.P.Chahar, Advocate
for respondent No.2.

None for respondents No.3 to 5.

INDERJIT SINGH, J.

Applicant-Sham Lal Kaushik has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against State of Haryana and other respondents, challenging the judgment dated 29.05.2014 passed by learned Chief Judicial Magistrate, Jhajjar, 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 Sham Lal Kaushik filed a

complaint against accused Om Parkash, Surender, Devender and Laxman under Sections 323, 379, 406, 420, 421, 427, 448, 453, 454, 456, 457, 504, 506 and 120-B IPC. The brief averments of the complaint as noted down in the judgment passed by learned CJM, Jhajjar, are as under:-

“2.Conspectus of the case of the complainant Sh.Shyam Lal Kaushik are that he has filed the instant complaint against accused persons, namely, Sh.Om Parkash, Sh.Surender, Sh.Devender and Sh.Laxman residents of village Dhakla, Tehsil and District Jhajjar, Haryana on the averments that he is owner in possession of one plot, situated within the revenue estate of residents of village Dhakla, Tehsil and District Jhajjar, Haryana. At present, the complainant along with his family is residing at Chandigarh as he is serving at Chandigarh. Further averred that the accused persons are quarrelsome persons, accordingly have demolished the boundary wall of the plot fraudulently. When the complainant objected over the act of accused persons, the accused persons gave beating to the complainant and also criminally intimidated him with dire consequences of life at an opportune time. Furthermore on 25.02.2007, when the complainant reached in village Dhakla, the accused persons also gave beatings to the complainant and called him by bad names. During the intervening night of 03/04.03.2007, the accused persons in furtherance of their common intention demolished the wall of the plot of the complainant and took over the possession of plot to the extent of 20 feet, accordingly complainant reported the matter to the SHO of police station, Jhajjar, Haryana but the police did not take any action against the accused persons. Further averred that the scene of occurrence was witnessed by Sh.Balbir Singh son of Sh.Shyam Lal, Sh.Balwant son of Sh.Chandgi Ram, Sh.Nawal, Lamberdar son of Sh.Chandrup, Pandit Murari Lal son of Sh.Gopi Ram and Subedar Balbir son of Sh.Chhelu Ram,

*residents of Dhakla, Tehsil and District Jhajjar, Haryana.
Hence, the instance complaint.”*

On the basis of preliminary evidence, the accused were summoned under Sections 448, 427, 323, 379, 506 read with Section 34 IPC, to which, they pleaded not guilty and claimed trial.

The complainant examined PW-1 Balwant, himself as PW-2, PW-3 Satish Kumar, PW-4 Balbir, PW-5 Shiv Kumar, PW-6 Surajbhan, PW-7 Raj Kumar alias Raju, PW-8 HRC Jogender Kumar and PW-9 Bhoop Singh.

At the close of complainant 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 CJM, Jhajjar, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 29.05.2014.

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

Notice of the application was issued. Learned State counsel as well as learned counsel for respondent No.2 appeared and contested the application. However, none has put in appearance on behalf of respondents No.3 to 5, despite service.

Lower Court record was requisitioned.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

The perusal of the findings given by learned Magistrate 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 Court below. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned Court below. The findings have been given by correctly appreciating the evidence in right perspective. Learned trial Court has discussed the evidence minutely and reasonings have been given.

As regarding injury under Section 323 IPC, I find that the complainant has not got himself medico legally examined. As per complainant, he and his wife were injured whereas other witnesses stated that so many persons have been injured. Similarly, there are other discrepancies. The complainant states that at the time of occurrence, only his family members were present, whereas PW-3 stated that 10-15 villagers were present at that time. Learned Magistrate also discussed the discrepancies in the statements of the witnesses amounting to material contradiction.

Again, one of the witness has stated that at the time of occurrence, the accused were in possession of the property in dispute. Even, one witness failed to tell the height of the wall, which was stated to be demolished. The complainant stated that he was not present when the wall was demolished. Even one witness stated that bricks were lying there. Learned trial Court discussed statements of all the witnesses and found material contradiction.

doubt exists in the complainant's version and learned Magistrate has rightly acquitted the accused-respondents by giving benefit of doubt.

In view of the above discussion, I find that the impugned judgment dated 29.05.2014 passed by learned CJM, Jhajjar, 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.

August 22, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No