

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

CRM No.A-2461-MA of 2017 (O&M)

Date of decision: January 30, 2019

Amrik Singh

...Applicant

Versus

Kulbir Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Deepak Verma, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Amrik Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Kulbir Singh and other respondents, challenging the judgment dated 18.09.2017 passed by learned Judicial Magistrate Ist Class, Shaheed Bhagat Singh Nagar (at Nawashahr), 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 further stated that applicant will suffer irreparable loss in case leave is not granted. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Amrik Singh filed a complaint against accused Kulbir Singh, Harjinder Singh, Narotam Singh, Gurmail Singh, Bhupinder Singh, Gurdeep Lal and Karnail Singh under Sections

brief averments of the complaint as noted down in the judgment passed by learned JMIC, Shaheed Bhagat Singh Nagar (at Nawashahr), are as under:-

“1. Briefly the facts as averred by the complainant are that he is resident of village Surapur and is Ex-President of Agricultural Service Society Village, Surapur and is presently primary member of the society He averred that he is a handicapped person. All the accused are members of Agricultural Services Society, Surapur. Accused no.1 is President of the Society and accused no.2 is Vice-President of the Society. He averred that in elections to the society, he was also a candidate. Therefore, accused persons have enmity towards him as he has opposed the accused in the election to the society. In that election, Paramjit Singh was caught red handed while casting vote of Karnail Singh in favour of accused persons, despite the fact that Karnail Singh was not an eligible voter in that election. Thereafter, Paramjit Singh gave in writing that he has committed the crime. Therefore, all the accused used their influence for the election to the office of society and complainant was defeated falsely in the election.

2. On 23.12.2014, all the accused persons passed a resolution against the complainant to harass the complainant and levelled false allegations that complainant has manhandled the staff members of the society and he would have looted the cash of the bank if there was no counter in between. They also levelled allegations that complainant has insulted the bank staff and employees of the bank and had caused damage to the bank record. They also alleged that complainant caused disappearance of movement record of the Bank. All the accused made false request vide that resolution to take action against him for calling bad names and for causing loss to the bank. They made a false complaint to the police through Registrar Co-operative Society Nawanshahr leveling above said false allegations and moved the police to take action against the complainant leveling false allegations. The police summoned the complainant for investigation, as accused. Again all the accused recorded their statements with the police and made false allegations. Due to the false allegations made by the accused and due to their false resolution a great loss of reputation has been suffered by the complainant. Now, the villagers and people of the area who used to respect the complainant earlier do not respect him. The loss of reputation of complainant has been caused due to false allegation of accused. Further, all the allegations were found false by I.O. As accused deliberately levelled false allegations, so as to defeat complainant in the election. Hence, this compliant.”

On the basis of preliminary evidence, accused were summoned under Section 500 IPC, to which they pleaded not guilty and claimed trial.

The complainant examined himself as CW-1, CW-2 Harmail Singh, CW-3 Harbans Singh and CW-4 Avtar 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. In defence, accused examined DW-1 Head Constable Suresh Kumar, who brought the record pertaining to complaint and placed on the record the same as Ex.DW1/A, copy of compromise Ex.DW1/B. Accused also examined DW-2 Head Constable Ravinder Kumar, DW-3 Head Constable Tarsem Singh and DW-4 Head Constable Naresh Kumar.

Learned JMIC, Shaheed Bhagat Singh Nagar (At Nawashahr), after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 18.09.2017.

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

Lower Court record was also requisitioned.

I have heard learned counsel for the applicant and have gone through the record.

From the record, I find that the base of the complaint is Resolution passed by the accused as member of the Society but that Resolution has not been proved on record as per law. Only photocopy of the Resolution has been exhibited but no proceeding book has been called to prove the Resolution. Furthermore, no permission to lead secondary

evidence has been taken. The photocopy is inadmissible in evidence and cannot be looked into. Learned counsel for the applicant argued that accused in statement under Section 313 Cr.P.C. have admitted passing of Resolution. Even if it is taken as it is, even then, contents of the Resolution are not proved.

Moreover, sending of the complaint regarding misbehaviour to SSP for taking action, does not amount to publication of defamatory material. Learned trial Court while appreciating the evidence held that an altercation took place between the complainant and Secretary of the Society as admitted by CW-3 Harbans Singh during his cross-examination. He also admitted that in his presence complainant has told Paramjit Singh that they had made their own laws. He also admitted that Amrik Singh told Paramjit Singh that they all were thieves. CW-4 Avtar Singh also stated that in his presence Amrik Singh told Paramjit Singh that they were doing black marketing and were discriminating.

The Court below further held that even the complainant witnesses who had come to depose at the asking of complainant, have admitted the fact, that complainant has leveled allegation on the members of society. Learned Magistrate further held while relying upon the law that any complaint moved by any person to any competent authority for taking action against any person, does not constitute offence of defamation.

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 and accused-respondents have been rightly acquitted. In no way, the judgment can be held as perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 18.09.2017 passed by learned JMIC, Shaheed Bhagat Singh Nagar (at Nawashahr), 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.

January 30, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No