

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-2057-MA of 2015 (O&M)
Date of Decision: 28.3.2019

Rakesh Kumar Arora

.....Applicant

Vs.

State of Punjab and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: - Mr. Sunil Chadha, Senior Advocate with
Mr. Saurav Kanojia, Advocate
for the applicant.

HARNARESH SINGH GILL, J.

CRM-41958-2015

Heard.

The application is allowed as prayed for. Delay of 6 days in
filing the application is condoned.

CRM-A-2057-MA of 2015

Applicant-Rakesh Kumar Arora has filed this application under
Section 378(4) Cr.P.C. seeking permission for leave to appeal against the
impugned judgment dated 31.8.2015 passed by Additional Sessions Judge,
Amritsar, vide which accused-respondent No. 2 Raj Kumar alias Raju
Madaan stands acquitted.

Prosecution story, in brief, is that on 8.12.2010, ASI
Narinderpal Singh along with other police officials, was present at Chowk

met him and made a statement that he was having a factory in the name of Guru Nanak Textile and also a godown where he had kept the thread for preparing clothes and spare parts of machine. It has been alleged that on 18.11.2010 Raj Kumar, who had been his partner for three years, threatened him on mobile to put him and his entire material on fire. On 19.11.2010, Raj Kumar put his godown on fire. The complainant further alleged that he had received a telephonic call from his neighbour that the godown had been put on fire by Raj Kumar and his companion, who came in the car and, had left the spot after putting the godown on fire. The complainant reached the spot and found that the entire material had been burnt. Fire Brigade came at the spot and extinguished the fire. It was further alleged that Raj Kumar was still threatening to kill him. On the basis of the statement made by the complainant, FIR was registered against accused-respondent No. 2.

It has been argued that FIR in question was registered against Raj Kumar-accused/respondent No. 2 on the statement of Rakesh Kumar complainant on 8.12.2010 (Ex. PW2/A). Raj Kumar is stated to be the ex-partner of the complainant and he had threatened the complainant on mobile phone on 18.11.2010 to put his premises on fire. On 19.11.2010, complainant-Rakesh Kumar received a telephonic message from his neighbour that Raj Kumar and his companion had put his godown on fire. Even thereafter Raj Kumar was threatening to kill him. Learned counsel has further argued that there is no delay on the part of the applicant for the reason that on the date of incident i.e. on 19.11.2010, Fire Brigade reached the spot to control the fire and police was informed. Since the godown of the applicant was on fire, whether he received any threat on mobile, is of least significance. Similarly the applicant has failed to furnish the name of

the neighbour, who informed the applicant regarding breaking out of the fire at his godown, is also of not much importance as his godown was set on fire on 19.11.2010.

We have heard the learned senior counsel for the applicant and have gone through the record of the trial Court with his able assistance.

From the above assertions, it has not been proved that the complainant had made any complaint on 19.11.2010 or 20.11.2010. Rather the complainant has not named Raj Kumar in the complaints filed by him. Furthermore, it is submitted by the complainant that he had received a telephonic message from his neighbour that Raj Kumar and his companion had put the godown on fire. Non-examination of any of the neighbours as a witness shows that the complaint made by complainant-Rakesh Kumar cannot be believed.

It has also come on record that prior to the occurrence of fire dated 19.11.2010, accused Raj Kumar had also got registered FIR No. 211 dated 26.12.2009 (Annexure D-10) against the applicant/complainant and the applicant/complainant had also got registered FIR No. 100 dated 7.7.2009 against Raj Kumar and others. From the record, it is evident that the complainant and accused/respondent No. 2 were earlier partners, but they separated after three years and thereafter, they got registered cases against each other. In the present case, the applicant/complainant has named the accused on 8.12.2010 i.e. after 19 days of the occurrence. Thus, the bad relations between the two and registration of FIRs against each other, to our mind, is the reason for naming Raj Kumar-accused/respondent No. 2 and that too at the belated stage to settle scores with him.

We have also taken into consideration that as per complainant

Rakesh Kumar, who appeared as PW-2, has stated in his cross-examination that Gulatis were having a *Karyana* business and their premises was situated near the place of occurrence where the fire incident took place. The occurrence of fire, as stated by the complainant, is of 10.30/12.00 noon. The owner of Gulati Karyana Store or their working staff has not been made to join investigation by the police, whereas they were the natural and most important witnesses. It has also come on record that employee of the applicant, namely, Kulwant Singh, was present in the premises on the date of occurrence. This fact has been stated by the applicant himself in his cross-examination. Kulwant Singh has not been examined as a witness in the present case nor any explanation has been given as to why such important witness, who is the employee of the applicant/complainant, has been withheld.

The other witnesses produced by the prosecution are the interested witnesses. Kewal Krishan son of Pishori Lal appeared as PW-4 and outrightly stated in his cross-examination that he had been providing labour to the applicant/complainant. Similarly, PW-6 Rajan Thukral stated that he was a Commission Agent and used to sell clothes from the cloth factory of Rakesh Kumar-complainant. PW-8 Rajan Kumar stated in his cross-examination that he had been going to the godown of Rakesh Kumar and was having business dealings with him but it was later on stopped in the year 2009. Similarly, PW-9 Rajesh Kumar stated that Rakesh Kumar complainant was his friend and he was running a factory of manufacturing clothes.

The above witnesses, being introduced by the prosecution, are the associates or ex-employees of the complainant and are residing far away

from the place of occurrence. Thus, their statements have not been proved beyond the shadow of reasonable doubt. Keeping in view the facts and circumstances of the present case, we are of the considered view that there is no illegality and infirmity in the order passed by the Court below which may warrant interference by this Court. The reasons given by the Trial Court while ordering the acquittal of respondent No. 2, are sound reasons and call for no interference.

No ground is made out to grant leave to file an appeal. Accordingly, the application is dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

March 28, 2019
Gurpreet

Whether speaking /reasoned : Yes/No
Whether Reportable : Yes/No