

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

CRM No.A-548-MA of 2014 (O&M)

Date of decision: July 25, 2019

Shri Bhagwan

...Applicant

Versus

Jasbir Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sagar Aggarwal, Advocate
for the applicant.

Mr.Sulinder Kumar, AAG, Haryana
for the respondent-State.

Mr.S.S.Mor, Advocate
for respondents No.3.

None for respondents No.2, 4 and 5 to 8.

INDERJIT SINGH, J.

Applicant-Shri Bhagwan 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 29.10.2010 passed by learned Judicial Magistrate Ist Class, Siwani, 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.

The perusal of the record shows that in FIR No.115 dated

28.05.2000, challan was presented under Sections 365, 342, 323 and 506 IPC against Nar Singh, Mange Ram, Suresh and Leela Dhar, whereas, criminal complaint was also filed by Shri Bhagwan against Hawa Singh, SHO, Hisar, Sh.Jagdish Naggar, DSP, Ram Kishan, Munshi, Partap Singh SHO, Bawani Khera, Mange Ram, Nar Singh, Suresh, Leela Dhan, two unknown persons who kidnapped the complainant and Driver of the jeep used in the offence. Accused SHO, Hisar, two unknown persons and driver of the jeep were not summoned and accused Sh.Jagdish Naggar, DSP was discharged by the Court. Both the cases were clubbed together and decided together vide impugned judgment dated 29.10.2010 by learned JMIC, Siwani. The accused were acquitted and complaint was also dismissed.

As per the record, complainant Shri Bhagwan filed a complaint against accused Jasbir Singh. The brief averments of the complaint as noted down in the judgment passed by learned JMIC, Siwani, are as under:-

“5. As far as the facts of the complaint Shri Bhagwan vs. Hawa Singh are concerned, it was alleged that complainant is residing at the above mentioned address and is a B.A. B.Ed. He was married to Sarla daughter of Ram Sarup in the year 1995. A son was born out of the said wed-lock. He was living with his family happily. The accused Mange Ram and Leeladhar are his brother-in-law and are greedy persons. In the year 1998 both these accused had taken his younger brother Jai Bhagwan and his wife Sheela Devi who is also their sister to Hisar and got constructed a house. They were also pressurizing the complainant to settle at Hisar. On 25.5.2000 at about 1'o clock he was present in his house. Accused Mange Ram and Leeladhar alongwith two persons to whom he does not know came in a jeep and entered his house. The accused Mange Ram Leeladhar forcibly caught, hold him

and his wife Sarla Devi and put them into the jeep. He raised noise upon which Sanjay son of Ram Bilas ran to there. The accused also beat him and gave threatening to him by a gun. They took them to Hisar through Siwarha Kungad. They took him to the house of his brother Jai Bhagwan where his sister in law Sheela Devi were already present. Accused Mange Ram was having a gun. He beat him with the adverse side of the gun. Thereafter he does not know which accused caused injury to him at what part of the body. He became unconscious. He was kept in a room. At about 7:00 PM accused Hawa Singh alongwith a Hawaldar and Constable came there and told him that he was to go to accused No.3 DSP Jagdish Naggar. He was taken to police station Sadar Hisar by the accused illegally where he was told by SHO that nothing wrong would be done to him, whatever is being done is going at the instance of accused Jagdish Naggar because accused Mange Ram etc. are doing work in the house of DSP Naggar. In the meantime, his brother Manphool met police of police station Bwani Khera and made application regarding kidnapping of the complainant. Accused Ram Kishan and accused Jagdish Naggar did not take any action at once. Accused Hawa Singh and SHO Hisar kept him in illegal confinement at the instance of accused Jagdish Naggar. The Panchayat of the village visited police station Sadar where he was kept. They refused to release him upon which those persons came back. His brother Manphool told him that they will meet Superintendent of Police on the next day. On 26.5.2000 accused Hawa Singh alongwith a constable and a Hawaldar brought him to Bwani Khera where accused Hawa Singh got written a letter from him in the presence of accused Ram Kishan to the effect that there is no involvement of any police official except accused Mange Ram and Leeladhar. Thereafter, he was left at village Pur. Thereafter, he was got admitted in Primary Health Centre for medical treatment where he was medically

examined and information was sent to the police station by the doctor upon which rapat No.29 dated 27.5.2000 was written on the basis of which FIR No.15 dated 25.5.2000 under Section 363/332/330/506 was registered against accused Mange Ram and Leeladhar alongwith other accused but no action was taken against Hawa Singh and Jagdish Naggar. It was further alleged that after receiving medical ruqqa police recorded his statement but no action was taken against accused Hawa Singh and Jagdish Naggar. The accused Ram Kishan and Partap Singh in order to conceal the illegal acts of accused Hawa Singh, SHO police station Hisar and Jagdish Naggar removed the written complaint made by his brother Manphool. On the next day of his kidnapping, the persons of the village met Superintendent of Police on his oral order, accused Hawa Singh alongwith a Constable and Hawaldar brought the complainant at police station Bwani Khera whereas accused Ram Kishan and Partap Singh in order to help the accused forcibly got recorded that there is no involvement of accused Hawa Singh SHO, Hisar and Jagdish Naggar forcibly. It is further alleged that an inquiry was conducted by the higher authority but accused Partap Singh forcibly got signature of his brother Manphool in which it was written that action has been taken against accused Mange Ram, Nar Singh, Suresh and Leeladhar so he does not want to proceed further but that record was torn at the objection of persons of the village.”

Finding prima facie case, the accused was charge-sheeted under Sections 323, 342, 453, 356, 506, 120-B, 166 and 167 IPC.

Learned JMIC, Siwani, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 29.10.2010.

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.3 appeared and contested the application.

Lower Court record was also requisitioned.

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

First of all, the perusal of the reasonings given by learned trial Court shows that only four injuries were found on the person of the complainant. One of the injury was external injury and three injuries were just complaint of pain, whereas the case of the complainant is that six persons came to his house and they gave him beatings and then, he was kidnapped in the jeep and on the way, he was again beaten. Even, in the complaint it is stated that with the butt of the gun, the injuries were also given but this version has not been corroborated by medical evidence. If six persons came to the house and gave injuries to the complainant and kidnapped him and on the way, again gave injuries, then only one injury will not be there. The Court also discussed the fact that the occurrence took place on 25.05.2000 and as per complainant, he was released on 26.05.2000 but the FIR has been got registered on 28.05.2000 and the criminal complaint was filed in the month of November 2000 i.e. after a long delay, which also creates doubt. Learned Magistrate has also found that complainant says that he has been medico legally examined on 26.05.2000 but as per the doctor, the complainant was examined on 27.05.2000. Furthermore, witness Sanjay, is also stated to have received injuries but he has not been medico legally examined to prove any injury.

The perusal of the findings given by learned JMIC, Siwani, 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 trial Court. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned trial Court. The findings have been given by correctly appreciating the evidence in right perspective and accused-respondents have been rightly acquitted.

In view of the above discussion, I find that the impugned judgment dated 29.10.2010 passed by learned JMIC, Siwani, 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.

July 25, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No