

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-851-MA of 2014

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Date of decision:09.01.2019

Saliman

...Applicant

v.

State of Haryana and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Shiva Khurmi, Advocate for Mr. Sarfraj Hussain, Advocate
for the applicant.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against State of Haryana, Mubarik and others-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 28.03.2014 passed by learned Sub Divisional Judicial Magistrate, Ferozepur Jhirka, whereby the complaint filed under Sections 323, 324, 506 and 34 IPC has been dismissed and the accused-respondents No.2 to 5 have been acquitted of the charges as framed against them.

It has been mainly stated in the application that accompanying appeal is being filed against the judgment dated 28.03.2014 passed by learned Sub Divisional Judicial Magistrate, Ferozepur Jhirka, which is likely to succeed on the grounds mentioned therein. It has been stated that

the learned trial Court has overlooked the evidence on record and settled law and wrongly acquitted the respondents/accused. It has, therefore, been prayed that this application be allowed and leave be granted to the applicant to file appeal.

From the record, I find that Saliman-complainant filed complaint against Mubarik, Gani, Niyamat and Rehmati for the offences under Sections 323, 324, 506 and 34 IPC. The brief facts of the case as noted down by learned Sub Divisional Judicial Magistrate, Ferozepur Jhirka, in his judgment dated 28.03.2014 are as under:-

“This complaint has been filed by Smt. Saliman against the accused aforementioned with the allegations that on 16.11.2008 the complainant along with her grandson Ikrar aged six years was present at her fields when her goat ventured into the fields of Gani. Ikrar followed the goat to fetch it. Gani abused Ikrar with filthy language and turned him away from his fields. When the complainant went there to take her goat, she was attacked by Mubarik son of Gani with an axe. Gani, Niyamat and Rehmati gave beatings to her with lathis. When Ikrar tried to save her he also was beaten up. On hearing the commotion Siraj and Hafiz reached the spot and rescued the complainant and her grandson from the accused. The accused threatened the complainant with dire consequences in case she reported the matter to anyone. The complainant returned home and narrated the entire incident to her husband, who took her to GH Mandikhera for treatment. After the first aid she received

further treatment from a Local Hakim at Alwar. The matter was reported to the Police on 18.11.2008 and a FIR was registered. It has been alleged that during investigation the Police colluded with the accused and filed cancellation report. With these allegations the complainant pleaded for appropriate action against the culprits.”

The accused were summoned for the offences under Sections 323, 506 and 34 IPC. The complainant examined PW-1 Dr. Pradeep Kumar, herself as PW-2, Siraj as PW-3 and Bashir-husband of the complainant as PW-4.

The trial Court finding *prima facie* case against the accused framed charges for the offences under Sections 323, 324, 506 read with Section 34 IPC, to which they pleaded not guilty and claimed trial. No further evidence was produced nor witnesses were cross-examined.

At the close of prosecution evidence, the statements of the accused were recorded under Section 313 Cr.P.C. and they were confronted with the evidence against them, but they denied the correctness of the same and pleaded themselves as innocent. In defence, the accused examined DW-1 Jamshed Khan, DW-2 Abdul Aziz and PW-3 Mohd. Haroon and closed the evidence after tendering the documents i.e. cancellation report, copy of judgment and application to SP, Mewat, copy of DDR No.19 dated 26.2.2008, final report in FIR No.186 dated 18.11.2008 etc.

After appreciating the evidence, the accused were acquitted by the learned Sub Divisional Judicial Magistrate, Ferozepur Jhirka, vide judgment dated 28.03.2014. Aggrieved from this judgment of acquittal, the

present appeal along with application seeking leave to appeal has been filed by the complainant.

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

A perusal of the record shows that, in no way, the findings given by the learned trial Court can be held as perverse or against the evidence or law. Nothing has been pointed out as to which material evidence has been misread by the Court below and which material evidence has not been considered by the Court below. In the present case, the occurrence took place on 16.11.2008 and the FIR was got registered after the delay of two days on 18.11.2008 and there is no cogent explanation for such a delay. Though, the delay itself is not fatal to the prosecution case but in the case of delay the Court is to scrutinise the evidence more cautiously and carefully.

In the present case, the complaint has been filed against four persons. It is case of the complainant that accused Mubarik was armed with an axe and he had given injury with axe. The injury as mentioned by the doctor is superficial in nature and such type of injury cannot be caused with axe. If injury with axe is to be given, then it being a heavy weapon the complainant might have suffered very serious injury. Again as per the complainant's case, Gani, Niyamat and Rehmati were stated to have given beating to the complainant and one Ikrar with Lathis, but Ikrar has not been examined as a witness though he is stated to be of 13-14 years of age.

Furthermore, a perusal of the MLRs of the complainant and Ikrar no where show that the injuries were caused with the sticks. Furthermore, the

occurrence is stated to have taken place at 9.00 a.m., but the complainant reached the hospital at 4.00 p.m. Furthermore, the FIR which was got registered by the complainant was inquired into by three Police officials and all of them had found it false. Further DW-2 Abdul Aziz stated that he had been provided protection by the orders of Hon'ble Supreme Court of India. Mubarik accused was posted as gunman and he remained with him. He further stated that he had moved an application Ex.DW.2/A stating that it is a false case. DW-3 Mohd. Haroon stated that on 20.11.2008 Abdul Gani had convened a Panchayat in the village with regard to the false FIR got registered by Bashir. In the Panchayat, the alleged attack on Saliman was found to be false and an application in this regard was given by the Panchayat to the SHO. Furthermore, a perusal of the record shows that there was previous enmity between the parties and already a case was pending against the family members of the complainant at the time of the alleged incident and the case of the accused is that to put pressure for compromise in that case this complaint has been filed.

After going through the record and the impugned judgment passed by the learned trial Court, I find that the reasoning given by the learned trial Court are correct as per evidence and law. I find that no illegality has been committed by the learned trial Court. In no way, the findings can be held as perverse. The findings have been given by the Court below after appreciating the evidence in right and proper perspective and same are as per evidence and law which do not require any interference from this Court and the same are upheld.

From the above, I do not find any ground to grant leave to file

appeal. Therefore, finding no merit in the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal, the same is dismissed.

January 09, 2019.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No