

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.15636 of 2015
and
Criminal Misc. No.A-835-MA of 2015

.....

Date of decision:10.01.2019

Anokh Singh

...Applicant

v.

Raj Kaur and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Arvind Galav, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.15636 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 40 days in filing the appeal and application seeking leave to file appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-835-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Raj Kaur and others-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 27.11.2014 passed by learned Judicial Magistrate Ist Class, Patiala, whereby the complaint filed under Sections 404, 406, 506, 379 and 34 IPC has been dismissed and the accused-

respondents No.1 to 3 have been acquitted of the charges as framed against them.

It has been mainly stated in the application that the accompanying appeal is being filed against the judgment dated 27.11.2014 passed by learned Judicial Magistrate Ist Class, Patiala, which is likely to succeed on the grounds mentioned therein. It has been stated that the impugned judgment has been passed on conjectures and surmises and all the accused are acquitted on the statement of complainant's witnesses on minor discrepancies. The above said judgment of acquittal has been passed by ignoring the legal as well as factual position. 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 Anokh Singh-complainant filed complaint against Raj Kaur, Raj Singh, Dhian Kaur, Baldev Singh and Bholly for the offences under Sections 404, 406, 506, 379 and 34 IPC. The brief facts of the case as noted down by learned Judicial Magistrate Ist Class, Patiala, in her judgment dated 27.11.2014 are as under:-

“Briefly the facts as averred by the complainant are that his marriage with accused No.1 Raj Kaur was solemnized on 27.02.1994. Complainant and accused No.1 has cohabited as husband and wife and four children were born out of the said wedlock. After marriage accused No.3 who is mother of accused No.1 used to come at the matrimonial house of accused No.1 and instigated her to leave the complainant. Every time complainant intervened in the matter and tried to convince

accused No.1. Accused No.3 during her instigation to accused No.1 used to say that whenever she will leave complainant, then she will get marry accused No.1 to such a person who will give every comfort of life. Life of complainant was become miserable but he used to bear every thing with the hope that things will settle down one day. From time to time accused No.4 & 5 at the instance of accused No.3 used to instigate accused No.1 against the complainant. Due to continuous pressure and instigation of accused No.3 to 5 accused No.1 refused to cohabit with complainant. Ultimately in the first week of March, 2008 complainant (sic. - accused No.1) left her matrimonial home at the instance of all the other accused persons without consent of complainant. Complainant tried to find out whereabouts of accused No.1 from accused No.3 to 5, but of no use. Accused in conspiracy with each other got married accused No.1 with accused No.3 without getting any decree of divorce and has got handsome amount from accused No.2 for the said marriage. It was a shock for Mohan Singh brother of accused No.1 and he could not bear such a humiliation at the hands of accused persons and has committed suicide after marriage of her sister with accused No.2. Sukhwinder Kaur wife of Mohan Singh after death of Mohan Singh tried to make accused persons aware about their crime but she was given severe beatings and was threatened that she would be thrown out alongwith her children from the

matrimonial home and she was made silent.

On 20.03.2008 when complainant was away from village on work at Patran then accused No.3 to 5 came to his house in his absence and took all the golden ornaments and other articles including washing machine, almirah, bed, gas stove and many other valuable articles from his house. Jasbir Singh and Sham Singh who were present at that time near the house of complainant tried to stop the accused persons from not doing such illegal acts in the absence of complainant at his residence but no one was heard.

When complainant came back home and saw that accused persons have committed theft, then he immediately inquired from them but accused persons again threatened complainant with direct consequences if he reported matter with the police. Accused No.3 to 5 openly stated that they have sold accused No.1 to accused No.2 for consideration. The matter was also reported to the police but police official did not take any action against the accused persons. All the accused persons in connivance with each have committed serious crime. Hence this complaint.”

After recording preliminary evidence, the accused were summoned to face trial for the offences under Sections 494, 406, 506, 379 read with Section 34 IPC.

Accused Raj Singh and Baldev Singh did not appear despite service and they were declared as proclaimed offenders. In pre-charge

evidence, the complainant examined CW-1 Jasbir Singh-eye witness, CW-2 Anokh Singh-complainant, CW-3 Kaka Singh and CW-4 Kuldeep Singh.

On finding a *prima facie* case, charge against accused was framed for the offence under Sections 379 read with Section 34 IPC. Further finding *prima facie* case against accused No.1 and 3, charges were framed for the offences under Section 506 and 494 read with Section 109 IPC, to which the accused pleaded not guilty and claimed trial.

At the close of the complainant's evidence, the statements of the accused were recorded under Section 313 Cr.P.C. and confronted with the evidence of the complainant, but they denied the correctness of the same and pleaded themselves as innocent and false implication. In defence, the accused examined Sukhdev Singh Lambardar as DW-1. The accused also tendered into evidence certified copy of judgment and decree dated 01.05.2012 as Ex.D.1 and Ex.D.2.

After appreciating the evidence, the accused were acquitted by the learned Judicial Magistrate Ist Class, Patiala, vide judgment dated 27.11.2014. 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 the findings have been given by the learned trial Court after appreciating the evidence in right perspective. In no way, the findings 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.

For the offence under Section 379 IPC, the learned trial Court held that as per case of the complainant in his absence on 20.3.2008, all the accused came to his house and committed theft of golden ornaments and other articles. The trial Court held that firstly, in the complaint, which was filed in the Court, name of Raj Kaur has not been mentioned regarding commission of theft on 20.03.2008 and it has been mentioned that on 20.03.2008 accused No.3 to 5 came at the house of the complainant. Raj Kaur has left matrimonial house in the first week of March. The complainant has deposed regarding applications Mark-A, Mark-B and Mark-C, which have been allegedly moved by the complainant to DGP Police, SSP, Police and Human Rights Commission, in which no where name of Raj Kaur has been mentioned, but it is mentioned that accused No.3 to 5 have also taken his wife and children along with them. The Court after appreciating the evidence held that story regarding stolen articles is doubtful. Furthermore, there is no document on record i.e. bill etc. to show the exclusive ownership of these articles. Further, the complainant failed to prove beyond a reasonable doubt the validity of the first marriage by bringing witnesses to prove that the marriage has been solemnized with accused No.1 after performing the ceremonies and as per law. Similarly, there is no cogent evidence to prove the ceremonies regarding the second marriage. Only Kuldeep Singh PW-4 stated that he was present at the time of second marriage which was performed by Raj Kaur. He is not aware regarding the ceremonies. Therefore, this is also fatal to the complainant's

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case. Further, a perusal of the record shows that the learned trial Court has appreciated evidence in minute detail and the findings have been given as per evidence and law. In no way, these findings can be held as perverse or illegal. The complainant has failed to prove his case beyond a reasonable doubt against the accused and the accused have been rightly acquitted. The findings have been given by the Court below after appreciating the evidence in right and proper perspective which are as per evidence and law and the same 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 10, 2019.

(Inderjit Singh)
Judge

hsp

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