

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1479 of 2019 (O&M)

Date of Decision: 16.11.2019

Daryao Singh

.....Applicant

Vs.

State of Haryana and others

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: - Mr. Vikas Bapurao Pakhiddey, Advocate
for the applicant.

HARNARESH SINGH GILL, J.

The applicant has filed the present application under Section 378(4) Cr.P.C. for grant of special leave to appeal against the judgment dated 24.4.2019 passed by the learned Additional Chief Judicial Magistrate, Jhajjar vide which the complaint filed by him was dismissed and respondents No. 2 to 4 were acquitted of the charge under Section 506 of the Indian Penal Code, 1860 ('IPC' for short) by giving them benefit of doubt.

The applicant-complainant filed a complaint under Sections 406 and 506 IPC against respondents No. 2 to 4 alleging that his father Chunni Lal had died on 10.5.1974 and during his lifetime, he had divided the ancestral residential house in equal parts, giving shares to elder brother Khem Chand and another brother Yad Ram (since deceased) adjacent to each other. It was further alleged that there was a flour grinding machine installed in the part of the property belonging to the applicant-complainant and on account of joining Indian Navy, he had handed over his share to above said Yad Ram to look after the same. After retirement, when the applicant visited the house, he noticed

that the flour grinding machine as well as grass cutting machine were removed by the accused and accused Yad Ram had started a shop which was later let out to one Rajender. For the last two and a half years, accused Yad Ram had stopped paying the monthly rent and possession of the property was also not given to the applicant. Regarding this, a complaint was made to the police but no action was taken. Hence the present complaint.

After recording of the preliminary evidence, accused were summoned to face the trial under Section 506 IPC. During the pendency of the trial, accused Yad Ram, brother of the applicant had died.

In pre-charge evidence, the complainant had examined four witnesses including himself.

After closure of pre-charge evidence, charge was framed against the accused under Section 506 IPC to which they pleaded not guilty and claimed trial.

In the statement recorded under Section 313 Cr.P.C., the accused denied the allegations and pleaded false implication.

After taking into consideration the evidence on record, the complaint was dismissed and respondents No. 2 to 4 were acquitted of the charge framed against them by giving them benefit of doubt.

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

It is argued by the learned counsel for the applicant that father of the parties had died on 10.5.1974 and during his lifetime, he had divided the ancestral property amongst his three sons in equal shares. The portion of the ancestral property, where a flour grinding machine and a grass cutting machine with 20 HP electric motor was installed, was in the share of the

applicant and during his service, he had handed over the same to his brother

Yad Ram (since deceased) along with the household goods, especially the ones which he had received during his marriage. It is further argued that the applicant-complainant had joined Indian Navy in the year 1964, and all the goods and property had been entrusted to Yad Ram, but he had removed the flour mill and started running a shop and later handed it over to a third person. It is also argued that no rent was being paid to the applicant and regarding this, six meetings had been convened with the panchayat of the village and even the settlement dated 25.3.2014 has not been honoured by respondents No. 2 to 4.

During the course of arguments, when the counsel for the applicant was asked as to whether any civil suit was filed by the applicant, he informed that no civil suit has been filed.

In the present case, respondents No. 2 to 4 were summoned under Section 506 IPC. The trial Court has rightly drawn a conclusion that no offence is made out against respondents No. 2 to 4. The settlement dated 25.3.2014 being relied upon by the counsel for the applicant, was never tested before the Civil Court.

Moreover, the dispute between the real brothers is regarding the ancestral property as flour grinding machine, grass cutting machine with 20 H.P. electric motor and applicant's two iron and one wooden box, which was received by him at the time of his marriage decades ago, cannot be considered in the criminal complaint.

The trial Court has rightly dismissed the complaint as the allegations raised by the applicant are time barred. To my mind, the ancestral property might be in red line (*lal dora*) of the village and possession of the same cannot be granted to the applicant by way of

criminal proceedings or in other way by twisting the arms, that too of real brothers.

Learned counsel appearing for the applicant could not point out any material illegality or perversity in the impugned judgment. Nothing has been shown as to the misreading and misinterpretation of the evidence by the learned trial Court, while passing the impugned judgment.

Consequently, the application seeking leave to appeal is dismissed. Special leave to appeal is declined.

(HARNARESH SINGH GILL)
JUDGE

November 16, 2019

Gurpreet

Whether speaking /reasoned : Yes

Whether Reportable : Yes