

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-33-MA-2014 (O&M)
Date of decision: 21.08.2019

Ramdia

....Applicant

Versus

Krishan and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ramesh Hooda, Advocate
for the applicant.

Mr. V.D. Sharma, Advocate
for respondents No.1 to 4.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Prayer in this application, filed under Section 378 (4) Cr.P.C. for grant of leave to file appeal, is for setting aside the judgment of acquittal dated 24.11.2011 passed by the trial Court, vide which complaint filed by the applicant under Sections 323, 452, 506, 34 of the Indian Penal Code (for short 'IPC'), was dismissed.

Brief facts of the case are that previously, the complainant had borrowed some amount from the accused persons, which he paid to them but they are greedy and clever. On 30.09.2004, they threatened him to teach a

lesson for not making full payment. On 02.10.2004 at about 7.30 a.m., when the complainant was present at his house, accused persons forcibly entered in his house, having lathies and dandas in their hands. Accused Krishan raised lalkara to kill him and thereafter, accused Prem gave lathi blow on the back of complainant. On this, complainant fell down and accused Prem gave blows on his sole. Accused Rajinder gave danda blow on his arm. Accused Kalawati also gave danda blow on his sole. Sonu and one Ram Mehar came on the spot and rescued him from the clutches of accused persons. While leaving, they threatened him with dire consequences. Thereafter, the complainant himself medico-legally examined on 03.10.2004 at CHC, Julana. He approached the police but no action was taken and therefore, he has filed the complaint.

The complainant led preliminary evidence and in view of the same, the trial Court summoned the accused persons vide order dated 15.10.2007 for commission of offence punishable under Sections 323/452 and 506 IPC read with Section 34 IPC.

In pre-charge evidence, the complainant had examined Ram Mehar son of Ram Dhan as PW1, himself as PW2, his son Sonu as PW3 and Dr. Surender Singh, Medical Officer, G.H. Jind as PW4. After going the pre-charge evidence, the trial Court vide order dated 20.11.2009, dismissed the complaint and discharged the accused persons. This order was challenged by way of filing a revision petition and vide judgment dated 09.09.2011, the revision petition was accepted and the order dated 20.11.2009 passed by the trial Court, was set aside. Thereafter, the accused were charge-sheeted under

Sections 323, 452, 506 read with Section 34 IPC. Accused pleaded not guilty and claimed trial.

In after-charge evidence, PW1 Ramdia-complainant, PW2 Ram Mehar, PW3 Sonu were recalled for further cross-examination by the learned defence counsel. Thereafter, after-charge evidence of the complainant was closed.

Statements of the accused persons under Section 313 Cr.P.C. were recorded, wherein they had denied the allegations of assaulting the complainant and denied the averments of the complaint and pleaded their innocence. In their defence, the accused persons tendered documents Mark A to Mark G and closed the defence evidence.

The trial Court, vide impugned judgment dated 24.11.2011, dismissed the complaint and acquitted the accused-respondents. The operative part of the impugned judgment of acquittal reads as under: -

*“..... After hearing the arguments from both sides at length, I am of the considered view that the complaint is liable to be dismissed due to the following reasons mentioned below. A perusal of case file shows that this complaint was dismissed for non-prosecution vide order dated 30.7.2007 passed by the then learned JMJC Jind and file was ordered to be consigned to the record room. Thereafter an application for restoration of the complaint was moved on 2.8.2007. The original file was requisitioned from the record room and fresh statements of witnesses were ordered to be recorded but in the light of the observation held in a case titled **M/s Indian Express Press, Bombay and another Vs. Shri N.P. Shrivastava 1986 (1)***

Crimes 656, it has been categorically observed by Hon'ble Madhya Pradesh High Court that once the accused are discharged due to the fact that complaint was dismissed in default, an application for restoration of the complaint subsequently filed and the Magistrate was pleased to restore the complaint. Therefore, such like order cannot be passed under Section 245 (2) Cr.P.C. for re-summoning of the accused after restoration of the complaint as the discharge has become final and accused cannot be prosecuted against for the same offence in view of the bar contained in article 20 sub clause (2) of the Constitution. The complaint was dismissed vide order dated 30.7.2007 and all the accused were discharged by the said order. Thereafter the complaint was restored by treating it as a fresh complaint. No preliminary evidence was recorded, rather the statement was made by the counsel for complainant that pre-charge evidence already recorded on file be considered and read on file on behalf of the complainant. The subsequent proceeding was vitiated in the light of the observation given by Hon'ble High Court in case titled **M/s Indian Express Press, Bombay and another Vs. Shri N.P. Shrivastava (supra)**. Even otherwise accused are innocent and falsely implicated into the case as Ramdiya examined his son Sonu as PW3, who is an interested witness, in support of his allegations as he levelled while stepping into witness box as PW2. The complainant did not fulfill the test as envisaged under Section 245 Cr.P.C. PW1 Ram Mehar who is alleged independent witness has admitted in his cross-examination that after hearing the noise he went to the spot; meaning thereby he did not see the accused attributing the injuries to the complainant. Actually complainant had obtained a loan from the accused Krishan and there was a

misunderstanding between both the groups regarding the payment of loan and complainant in order to avoid the payment wanted to settle his score with the accused persons. MLR Ex.PW4/A shows that there were only three contusions i.e. on the right side of back, left side of the back and left side below scapula whereas complainant deposed that he was dragged by the accused persons and given injury on the left side of his body as well but the MLR does not correspond with his allegations. PW3 Sonu (son of the complainant) stated that before leaving the spot accused had given him the injuries whereas it is the improved version which finds no mention in the version of the complainant. Complainant has deposed that he was attributed injury on his left leg by the accused whereas MLR does not find any mention of injury in the left leg. It is worthwhile to mention here that MLR was prepared on 3.10.2004 at about 11.40 AM after the gap of 17 hours. It is the case of the complainant that firstly he went to the police and thereafter to the medical officer to get himself medically examined and further he came back to the police station to lodge the report. His statement stands falsified as there is no reported matter in the office of S.P. as claimed by him. His version is not free from blemishes. Accused are facing the gamut of trial for the last more than five years. Thus the complaint is dismissed and by extending the benefit of doubt accused namely Krishan, Prem, Rajinder sons of Hari Singh, Kalawanti wife of Krishan son of Hari Singh, all residents of Village Padana, are hereby acquitted of the charge levelled against them for the commission of the offences punishable under Sections 323, 452, 506 read with Section 34 IPC. Their bail bonds and surety bonds shall stand discharged. File be consigned to the record room.

Announced in open court.”

The applicant thereafter preferred an appeal before the lower appellate Court and the lower appellate Court dismissed the appeal on merits as well as on maintainability of the same. The applicant has filed the present application challenging the judgments passed by the Courts below.

Learned counsel for the applicant has argued that it has come in the statement of PW1 complainant Ramdia that the accused persons forcibly entered into his house with an intention to cause injuries and extended threats to him. It is further submitted that from the statement of PW1, it is clear that the applicant was assaulted after the accused entered into his house and accused Krishan raised a lalkara and thereafter, gave a lathi blow on his back and also gave fist blows. Accused Rajinder gave a stick blow on his arm and accused No.4 Kalawanti also gave a stick blow on his sole. When the applicant-complainant raised hue and cry to save himself, PW2 Ram Mehar and PW3 Sonu came at the spot and rescued him. Learned counsel has referred to the MLR Ex.PW4/A, which shows that there are three contusions on the right side of back, left side of back and left side below scapula.

Learned counsel has further argued that the ocular version of the complainant is duly supported by the MLR and therefore, the trial Court has wrongly discharged the accused persons. It is further submitted that even PW2 and PW3, who had reached at the spot and rescued the complainant from the clutches of the accused persons, also prove that the accused persons gave beatings to the complainant. It is next argued that the trial Court has

wrongly acquitted the accused persons and they be convicted in accordance with law.

In reply, learned counsel for respondents No.1 to 4 has opposed the arguments on behalf of the applicant on the ground that both PW2 and PW3 are highly interested witnesses. It is argued that despite availing opportunities, the complainant failed to produce his entire evidence especially PW4 Dr. Surender Singh for the purpose of cross-examination and therefore, in the absence of his cross-examination, the same cannot be read into evidence, as it will adversely affect their right of defence.

After hearing learned counsel for the parties, I find no ground to interfere in the findings recorded by both the Courts below, for the following reasons: -

- (a) As per testimony of PW1; firstly accused Krishan gave a lalkara and thereafter, accused Prem hit him with a lathi on his left hand and he fell down and thereafter, accused Rajinder gave a lathi blow on his back and accused Kalawanti also gave a lathi blow on his foot. However, a perusal of the statement of applicant made in the preliminary evidence shows that the complainant has not stated that accused Kalawanti had hit him with a lathi on his foot and when confronted, the applicant admitted this fact.
- (b) It is worth noticing here that after completion of the after-charge evidence, the accused persons have requested the trial Court for granting permission to cross-examine all the prosecution

witnesses in the pre-charge evidence, but the applicant failed to produce PW4 Dr. Surender Singh, who medico-legally examined the complainant and therefore, the accused persons were deprived of their right to cross-examine this witness and put their defence. Moreover, the evidence of the prosecution was closed by Court order and the applicant never challenged that order by way of filing any appeal/revision and thus, by not granting right to cross-examine PW4 Dr. Surinder Singh, an important right of the accused persons i.e. to cross-examine and put their defence, has been denied by the prosecution.

- (c) The trial Court has recorded a finding that even PW3 Sonu, son of the complainant, in cross-examination, has shown ignorance about the fact, if his father-PW1 had gone to the hospital for getting himself medico-legally examined.
- (d) It is also worth noticing that in cross-examination, PW2 Ram Mehar has stated that he has borrowed money from the accused persons and he was confronted with the *bahi* entries Mark A1 to Mark A6 regarding the loan and therefore, he was an interested witness.
- (e) The Courts below have also relied upon two judgments Mark A and Mark B, passed in similar complaints filed by the applicant, against other co-villagers, which were dismissed and the accused persons were acquitted. The trial Court has thus recorded a

finding that the applicant is in the habit of filing false complaints.

- (f) It is well settled principle of law that while entertaining an appeal against the judgment of acquittal, the complainant has to make out a very strong case demonstrating that the judgment passed by the trial Court has caused grave miscarriage of justice or is wrong on the given facts of the case or is manifestly unjust and unreasonable.

For the reasons recorded above, finding no infirmity in the well reasoned judgments passed by the Courts below, present application for grant of leave to file appeal is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

21.08.2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No