

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

**CRM-A-357-MA-2011(O&M)
Date of decision:-13.3.2020**

Mohan Lal

...Applicant

Versus

State of Haryana and another

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Manish Soni, Advocate
for the applicant.

Mr.Kuldeep Sharma, DAG, Haryana.

Mr.Sunil Jain, Advocate
for respondent No.2.

H.S. MADAAN, J.

Applicant – Mohan Lal has filed this application under
Section 378(4) Cr.P.C. seeking special leave to appeal.

Briefly stated, facts of the case are that complainant Mohan
Lal son of Shri Lal Ji, resident of village Harsaru, Tehsil and District
Gurgaon (now Gurugram) had filed a private complaint against accused
Man Singh in the Court of Illaqa Magistrate at Gurugram on the

allegations that he belongs Bawaria community, which is a scheduled caste; on 20.4.1997, he along with his son had gone to Delhi in connection with personal work and at about 8:00 a.m. in their absence, the accused came to their house and observing Smt.Jamna wife of complainant to be alone, the accused removed his lower clothes and tried to push Jamna to a lonely place; Jamna cried for help, which attracted daughter of the complainant, namely, Pushpa, who intervened and rescued Jamna from the clutches of the accused. According to the complainant, when he returned from Delhi, his wife narrated the entire story to him, then he along with his wife went to Police Station Sadar, Gurugram to report the matter, but no action was taken against the accused, as such he filed a private complaint in the Court of Illaqa Magistrate at Gurugram.

Learned Illaqa Magistrate after holding necessary enquiry, summoned the accused to face trial for the offences under Sections 354, 509, 506 and 452 IPC as well as under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Act). After procuring presence of accused, the case was committed to the Special Court for trial under the Act.

On receipt of the case in question, charge for the offences punishable under Sections 354, 509, 506, 452 IPC and under Sections 3(1)(xi) of the Act was framed against the accused by learned Special Judge, Gurugram vide order dated 22.12.2009, to which, he pleaded not guilty and claimed trial.

During the course of evidence of complainant/prosecution, three witnesses were examined. The complainant got his own statement

recorded as PW1. Jamma Bai wife of complainant appeared as PW2 and Pushpa was examined as PW3.

With that the evidence of the prosecution/complainant stood closed.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to him but he denied the allegations contending he had been falsely implicated in this case by the complainant to settle a civil dispute with him regarding which civil suits were pending and that on 27/28.4.1997, he was on duty at Ahmedabad.

In defence evidence, accused examined Khushinder Singh Chauhan as DW1.

With that the defence evidence stood closed.

After hearing arguments, learned Special Judge, Gurugram acquitted the accused of the charge framed against him vide judgment dated 17.8.2010.

The reasoning given by Special Judge, Gurugram for arriving at this conclusion is contained in paras No.14 to 17, which for ready reference are being reproduced as under:

14. The evidence of the complainant is hearsay and is thus inadmissible in evidence. Regarding the occurrence of 27.04.1997 he has made improvements in his statement. He had not stated about the said occurrence in the complaint on which cognizance was taken by the court. The presence of PW3 Pushpa at the time of alleged occurrence is highly doubtful. It cannot be believed that she had heard the cries of her mother from a distance of 500 yards especially when the alleged occurrence has taken place in the backyard of the house. Further, her mother has made material

improvements in her statement which makes her testimony doubtful and she too has stated on the same lines. On said ground too, her testimony cannot be believed.

15. The wife of the complainant in her statement before the Police on which case was registered has simply stated that the accused came to the house and on seeing her alone removed his lower clothes and tried to push her to a lonely place. But, now in her statement before the Court, she has stated that the accused had also abused her in the name of her caste saying “dhedni Chamari, bawaria main tere ko khatam kar dunga”. She has further stated that the accused had caught her breast. She had not stated so in her statement before the Police. It is not safe to place implicit reliance upon the testimony of such a witness to convict the accused especially when admittedly there is a dispute between the parties over a passage.

16. As per case of the prosecution, in the occurrence the wife of the complainant had also received some injuries and she was taken to Narula hospital for treatment. But no such treatment record has been placed on the file nor has the doctor concerned been examined to prove said fact.

17. In view of the aforesaid facts, the fact that on investigation by the Police the allegations made by the complainant were found false cannot be ignored. Not only the allegations were found false, it was also recommended by the investigating Officer to initiate proceedings against the wife of the complainant under 182 IPC for getting a false case registered.

The judgment of acquittal left the complainant aggrieved and he has knocked at the door of this Court by moving an application under Section 378 (4) Cr.P.C. for grant of special leave to appeal against the judgment of acquittal.

I have heard learned counsel for the parties besides going through the record.

The applicant/complainant has also filed an application under Section 391 read with Section 386 Cr.P.C. for adducing additional evidence and issuance of directions to the trial Court to provide effective opportunity to the applicant/complainant to produce and prove the copy of MLR – Mark-A as Annexure A/1 and copy of Scheduled Caste Certificate as Annexure A/2 and for directing retrial of the respondent/accused and to decide the case afresh.

Inter alia, it is contended that inadvertently during the course of his evidence counsel representing the complainant failed to examine the doctor to prove the MLR, which was earlier produced as Mark-A and copy of Scheduled Caste Certificate issued by Tehsildar, Gurugram; that when the case was fixed for recording of statement of accused under Section 313 Cr.P.C. then the complainant through Public Prosecutor had filed an application dated 21.5.2010 under Section 311 Cr.P.C. for summoning and examination of witnesses to prove the MLR and Caste Certificate of the complainant but unfortunately the said application remained undecided during the trial and no order whatsoever was passed on the said application. Therefore, the application be allowed.

The application is being resisted by the respondent/accused.

After hearing learned counsel for the parties, I find that the application does not come within four corners of Section 391 Cr.P.C., which deals with power of Appellate Court to take further evidence. The case of the applicant is not covered by Section 311 Cr.P.C. even. As per own version of the complainant, these documents were available with him during trial before Special Judge, though it is stated that the

application under Section 311 Cr.P.C. for production of such documents had been filed in the trial Court, which remained undecided. But from the perusal of the lower Court record, no such application could be traced out and no such mention in any of the interim orders passed could be found. These documents ought to have been produced during the trial and now at this stage, those cannot be allowed to be produced so as to have a fresh trial when the incident had allegedly taken place on 20.4.1997 i.e. about 23 years back and accused has already faced lengthy trial. Allowing the application would amount to putting the clock back, which would not be proper and appropriate under the facts and circumstances of the case. Therefore, the application stands dismissed.

Furthermore, I do not find it a fit case to grant special leave to appeal against the judgment passed by Special Judge, Gurugram.

The judgment passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

Thus no ground is made out to grant special leave to appeal in this case. The application is, therefore dismissed accordingly.

13.3.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No