

CRM-A-1713-MA-2016

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

CRM-A-1713-MA-2016 (O & M)

Date of Decision: 13.02.2020

Rama Kant

... Applicant

Versus

Krishan Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. N.S.Gill, Advocate for
Mr. Munish Gupta, Advocate,
for the applicant.

HARNARESH SINGH GILL, J.

CRM-29392-2016

Heard.

In view of the grounds mentioned in the application,
the same is allowed and the delay of 107 days in filing the
application seeking leave to appeal, is condoned.

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Special leave to appeal has been sought against the
judgment of acquittal passed by the learned Judicial
Magistrate Ist Class, Narnaul, while dismissing the complaint
under Sections 323, 427, 341 and 506 IPC.

As per the judgment dated 31.03.2016, the

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respondent was acquitted of the notice of accusation.

The learned trial Magistrate has recorded the following reasons to dismiss the complaint:

- (i) Notice of accusation was served upon the accused under Section 323 IPC. Admittedly, as per the complainant, he did not get his medical examination conducted, although he had suffered blackening of skin on the area due to the beatings given by the accused. There was no MLR on the case file to support the submissions of the complainant.
- (ii) Ex.D-1 was the investigation conducted by the S.H.O. concerned upon the complaint of present complainant, wherein he found that no such incident had occurred.
- (iii) The complaint reveals that the incident had started because of person called Pushkar Chowkidar. Said Pushkar Chowkidar had given evidence in favour of complainant's father and against the present accused in a civil suit. Allegedly, said Pushkar had been beaten up by the accused for giving said evidence and the complainant had saved him. Due to this, accused had a grudge against the

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complainant which gave rise to the present incident. However, in his entire examination-in-chief, the complainant had not disclosed about the incident taken place with Pushkar. The name of Pushkar had emerged for the first time, when complainant stated that the accused had threatened him with dire consequences. Said Pushkar being most important witness to connect the motive shows by the present complainant, had not been examined by the complainant.

- (iv) Perusal of Ex.DW 1/A reveals that the accused was present in his Animal Hospital on the day i.e.16.05.2009, when the incident in question had occurred. His presence had also been supported by DW 2 Sukhbir and DW 3 Om Parkash. Both these witnesses had categorically proved the presence of accused in Gorir.

The learned Magistrate has taken a reasonable and probable view on appreciation of evidence.

As per the conclusion drawn by the learned Magistrate, the complainant has miserably failed to prove that he had been beaten up by the accused. Even no MLR had

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been produced by the complainant to prove his case. Moreover, when the investigation was conducted by the S.H.O., it was found that no such incident had occurred. DW 2 and DW 3 also proved that on the day of occurrence, the accused had been present in his animal hospital.

Thus, in view of the totality of the circumstances and the settled position of law, the case attempted to be built by the complainant, appears to be suffering from fatal infirmities so much so it goes directly to the root of the case and shakes the very edifice on which the case of complainant rests. It is also relevant to mention here that the criminal conviction entails enigmatic and stigmatic exposures and experiences and thus it become of paramount importance to demand evidence of unimpeachable character and of unambiguous nature.

Therefore, considering the above mentioned facts and legal positions, it would not be unjustified and completely misplaced to say that the complainant has miserably failed to prove his case. Further, the case of complainant is required to rest on his own leg and the same cannot be allowed to be bypassed in a casual and cosmetic manner.

Learned counsel for the applicant, although, made sincere attempt, yet failed to draw the attention of this Court to any substantive error or perversity. Still further, the

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reasons which have been extracted above, appear to be probable and plausible.

From the above, I do not find any ground to grant special leave to file appeal. Therefore, finding no merit in the present application, the same is dismissed.

13.02.2020
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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