

CRM-A-1836-MA-2017

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

**CRM-A-1836-MA-2017 (O & M)
Date of Decision: 21.01.2020**

Baldev Singh

... Applicant

Versus

Gian Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. G.S.Hayer, Advocate,
for the applicant.

HARNARESH SINGH GILL, J.

Special leave to appeal has been sought against the judgment of acquittal passed by the learned Judicial Magistrate Ist Class, Gidderbaha, District Sri Muktsar Sahib, while dismissing the complaint under Sections 379, 382, 427, 447, 448, 451, 452, 323, 324, 148 and 149 IPC.

As per the impugned judgment dated 09.09.2016, respondents No.1 and 4 had been acquitted of the charges.

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

- (i) As per the complainant, the accused had remained at the spot from 11.00 a.m. to 5.00 p.m whereas CW 3 Gamdoor Singh stated that the whole incident lasted for about 2 to 2½ hours. CW 3 Gamdoor Singh further

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stated that the accused had taken two rounds to pick the stolen articles whereas Gurmail Singh (nephew of complainant) stated that the accused had taken four rounds. It is impossible to take away 21000 bricks even in four trolleys. The complainant was not clear to tell as to what time the accused persons had remained at the spot and also in how many rounds, they had taken away the stolen articles.

- (ii) It was incumbent for the complainant to prove his actual physical possession over the place/dwelling house where the accused had been alleged to have trespassed. The complainant is not in exclusive and actual physical possession over the property purchased by him vide Ex.C-1. However, there was already a civil dispute pending qua the said property and both the parties i.e. the complainant and accused, were alleging their possession over it. When the accused persons were also alleging their possession over the place where the offence had taken place, and a civil suit had been decided against the complainant, the accused persons could not be implicated for trespass on the basis of intention to intimidate, insult and annoy the complainant.
- (iii) As per the complainant's witnesses, the accused persons had been armed with deadly weapons and were 16 in numbers. However, no charge for causing any hurt has

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been levelled against the accused persons.

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 had failed to prove any offence of causing any hurt to him. It has also not been proved by the complainant that the accused persons had entered the place of occurrence with an intention to intimidate, insult and annoy him. Further, a civil suit has been decided against the complainant and a civil dispute regarding the land where the alleged occurrence had taken place, is still pending between the parties. Therefore, the complainant had failed to prove any allegation against the accused.

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 that it goes directly to the root of the case and shakes the very edifice on which the case of the complainant rests. It is also relevant to mention here that the criminal conviction entails enigmatic and stigmatic exposures and experiences and thus it becomes 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 the complainant is required to rest on his own leg and the same cannot be allowed to be bypassed in a casual and cosmetic manner.

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

Moreover, there is a delay of 266 days in filing the application seeking leave to appeal. Learned counsel for the applicant has failed to show any cogent and convincing reason to condone the delay of 266 days in filing the application seeking leave to appeal.

From the above, I do not find any ground to condone the delay in filing the application seeking leave to appeal and grant special leave to file appeal. Therefore, finding no merit in the present applications, the same are dismissed.

21.01.2020

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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