

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

**CRM-A-1835-MA-2015
Reserved on : 30.03.2022
Pronounced on: 20.04.2022**

Pankaj Sharma

... Applicant

Versus

State of Punjab and others

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Saurav Kanojia, Advocate for the applicant.

Mr. Navdeep Chhabra, DAG, Punjab
for respondent No.1.

None for respondent Nos.2 & 3.

G.S. Sandhawalia, J.

The present application under Section 378 (4) of the Cr.P.C. for grant of leave to appeal has been filed by the complainant, who is aggrieved against the acquittal of the accused Harminder Mohan Sharma @ Mintu and Deepak, respondent Nos.2 & 3 herein, who were given benefit of doubt on the ground that the complainant had failed to prove the case in the complaint filed under Sections 307/323/324/328/341/392/506/148/149/34 IPC.

2. The reasons which prevailed upon the Additional Sessions Judge, Ludhiana to come to the said conclusion though manifold was that he noticed there was a delay of as many as 25 days in filing the complaint which was done on 12.07.2007, whereas the incident was of 17.06.2007 at 7:00 P.M. It was noticed that there was nothing to show that the complaint (Ex.PW2/A) was preferred to the concerned police station as alleged. The

Medical Officer had not send the medical ruqa to the police and the chance witness namely Inderjit Singh had remained with the injured complainant and after treatment gone to Police Station Laddowal, which was unlikely. The version of the alleged eye witness namely Inderjit Singh was also doubted and the factum he had remained with the complainant after taking him to the hospital and accompanying to the police station in the late hours. The factum there was a contradiction in his initial statement and the subsequent one of giving blows to the complainant, who was aware of the name of the complainant and the accused created the doubt in the mind of the Trial Court on the ground that if he was not having acquaintance with the complainant, then how he was able to utter the name of complainant at the particular moment, which was held to be not reliable or trustworthy witness. The absence of Gurpreet Singh, who was an Advocate, as was the complainant, at the hospital and the police station, who rather had been intimated about the incident, was also noticed. The complaint being drafted by another co-Advocate and footnote showing that it was typed at Phillaur, whereas the incident had never happened there and only the complainant was resident of the said place was also kept in mind. Similarly, it was noticed that none of the Advocates, who allegedly visited with the complainant at Police Station Laddowal, had been examined. Though accused No.2 Harminder Mohan Sharma was a police constable, but no effort as such was made to write to any higher

officer, such as DSP, SP, Commissioner of Police regarding the non-lodging of the FIR and his involvement. It was noticed that the complainant was an Advocate, who had also not visited the Police Station Laddowal and belongs to a strata of society, who was aware of his rights and, therefore, there were chances of embellishment, improvement and false implication. The Medical Officer also not having noticed the depth of injuries and whether there were stitches for stopping the oozing of blood and whether the treatment given to him, had created suspicion and doubt in the mind of the Trial Court, since the treatment chart was also absent. It was noticed that there was a motive as such, as there was enmity with the father of the complainant and the accused persons. Therefore, keeping in mind the well known principle, the enmity is a double edged weapon, the benefit of acquittal had been granted. The factum of complainant being injured and that his statement had to be taken at a higher pedestal was also kept in mind and the fact that he had not preferred to go to the police station firstly and the contradictions in his statement eventually led to the acquittal of the two accused, who were put on trial.

3. Senior Counsel has vehemently argued that the medical injuries on the person of the complainant corroborated the statement of injured and of chance witness which had wrongly been brushed aside. It was, accordingly, contended that accused No.2 Harinder Mohan Sharma was a constable in the Punjab Police and, therefore,

the case was not registered by the police and which has wrongly resulted in the acquittal, as the Trial Court was in error that there was a delay in lodging of the FIR. It is, accordingly, contended that the leave to appeal is liable to be allowed, as the judgment in question suffers from infirmities and being a perverse judgment, cannot stand judicial scrutiny.

4. We have gone through the record of the case with the assistance of the Senior Counsel and are rather of the considered opinion, keeping in mind the principles laid down by the Apex Court that where two views are possible, it would not be justified to take a view as has been canvassed by the Senior Counsel and interfere in the well reasoned order passed by the Trial Court. In '**T. Subramanian Vs. State of Tamil Nadu**', (2006) 1 SCC 401, the Apex Court set aside the judgment of the High Court, whereby the appellants had been acquitted by the Trial Court under the Prevention of Corruption Act. It was held that the Appellate Court should not interfere with the acquittal recorded by the Trial Court and that only where the material on record leads to a sole and inescapable conclusion of guilt of the accused, interference is to be done by the Appellate Court. The same principle was laid down in '**K. Prakashan vs P.K. Surenderan**', (2008) 1 SCC 258, which was the case pertaining to provisions of Section 138 of the Negotiable Instruments Act. Resultantly, the judgment of the High Court, wherein there was a interference as such with the judgment of the

acquittal passed by the Trial Court for the bouncing of the cheque, was interfered with. It was held that there was a detailed judgment analyzing the evidence brought on record and in the absence of any perversity or legal infirmity, the Appellate Court was not justified in reversing the judgment of acquittal, only because another view was possible to be taken and resultantly, the appeal was allowed. Keeping in mind the said principles, if one has to examine the findings recorded alongwith the material which has come on record, it would be apparently clear that the benefit of doubt was rightly given.

5. It is not disputed that the incident was of 17.06.2007 at 7:00 P.M and the complainant was a practicing Advocate, as per his own deposition. The motive to implicate and similarly the motive to inflict the injuries has come on record, as it was the own case of the complainant that his father was having a dispute with accused Nos.1 to 4 and they used to threaten him and his father with dire consequences and litigation was pending, due to which the incident took place. It is also admitted fact that accused Surinder Mohan Sharma is the cousin uncle, which has come in his cross-examination and that FIR No.149 was got recorded by father of the complainant against accused Surinder Mohan Sharma, which was quashed by this Court. Rather, accused Surinder Mohan Sharma had also filed a civil suit against the father of the complainant, which was decided in his favour by the Trial Court and as well as by the lower Appellate

Court and the dispute was stated to be pending in the High Court. The factum of the incident having taken place at 7:00 P.M, but in spite of that the complainant did not seek immediate redressal before the higher authorities, even though he was straightway taken to the hospital by the chance witness PW-3 Inderjit Singh, who in his statement strangely enough had identified the accused present, who were giving Kirpan blows to the complainant. It is at his intervention they had ran away from the spot with their weapons and he had taken the injured to the Civil Hospital, Ludhiana. It is also the case of the prosecution that Kirpan blows were being inflicted on the person of the complainant, but at the intervention of the chance witness he was not injured and accused left thereafter, which is highly improbable. There is also mention that iron rod blows were also given on the person of the complainant.

6. As per the version of the chance witness in the cross-examination, they had given a message to Gurpreet Singh, Advocate, who was the colleague of the complainant and was known to the eye witness. In cross-examination he admitted that he did not contact the police regarding the said occurrence or he did not accompany the injured to his house and his friends had come to the hospital and he had gone to the Police Station Laddowal with them and, thereafter, left for his house. This conduct was highly unnatural for a chance witness to go to the police station, which fact had also been noticed by the Trial Court. The witness also stated that his clothes had also

received blood stains and he had signed the form of Pankaj Sharma at the time of admission in the hospital and the complainant had disclosed the names of the accused but he did not remember when he did so, though he admitted that he met the complainant three times after the occurrence. He denied the factum that on the asking of the complainant and Gurpreet and other advocates, the accused had been implicated. Thus, the statement of the chance witness as such has been rightly held to be not credible, by the Trial Court, which we have also perused in detail and are in agreement with.

7. Similar is the statement of Pankaj Sharma, injured complainant who admits that three Advocates namely Jai Raj Singh, Ranjit Kumar and Vikram Singh, were amongst the friends who had come to the hospital and when he had visited the Police Station Laddowal on 19.06.2007, Jai Raj Singh and Vikram Singh were accompanying him and had submitted a written complaint, on which no action had been taken. He admitted that he did not meet any higher officer such as DSP, SP, Commissioner of Police with regard to the present case and he had sent the written complaint to the SSP, Ludhiana, of which he had no receipt number. There was also an admission by him that he is a registered Bar Member since the year 2000 and was practicing as an advocate. When the incident took place, he had not approached the President of Bar or any Executive Member of the Bar, District Bar Association Ludhiana, which has also come in his cross-examination. In the explanation he stated that

he had talked to some of his colleagues also.

8. Thus, it is highly strange that the Members of the Bar, who are known to have a fraternity strength were not brought into the picture and never agitated for the grievances of complainant that he had been injured at the instance of some persons, though related to him, which further goes on to show that there was something which was being hidden by the complainant and, thus, the benefit of doubt was rightly granted to the accused. It is also to be noticed that he belongs to Phillaur but he preferred to take treatment at Civil Hospital, Ludhiana, though they are situated at a equal distance from the place of incident and rather than rushing towards home, he rushed to the Civil Hospital, Ludhiana.

9. The statement of Dr. Gurbinder Kaur, Medical Officer, Civil Hospital, Ludhiana, where he was examined also does not go on to show that the injuries which were recorded by her, were subjected to x-ray, specially injury No.1 and 6, in spite of an opinion to do so.

10. A perusal of the injuries would go on to show that even injury No.2 was incised wound, was not preferred for x-ray, though stated to be inflicted by a sharp edged weapon. The complaint of sprinkling of red chilly powder being injury No.9 was also recorded as uncertain, as there was no mention of red chilly in and around of the face or still present in the eyes. Incised injuries were as such not even proved by measuring their depth. As per the cross-examination

also injuries No.3 to 8 were stated to be superficial in nature, though the Doctor stated that injuries No.1 and 3 could not be the result of fall due to accident and chances of the injury with friendly hand are less. She, however, admitted that patient did not narrate the history as to how he had sustained the injuries, which further creates the doubt in the mind as such as to how the injuries were received and also there is nothing to show that Inderjit Singh, the chance witness was present at that point of time.

11. The cumulative discussion of these factors would go on to show that justifiable reasons were given by the Trial Court and the evidence was discussed in detail and are in consonance with the record as noticed by this Court. In the case of '**State of Punjab Vs. Bhag Singh**', AIR 2004 SC 1203, it was held that this Court had to detail out the reasons where prayer for grant of leave was not made out being the first Appellate Court and whether the witnesses were reliable, cogent or trustworthy, were to be examined before coming to any conclusion whether the acquittal was justified. In the case of '**Gamini Bala Koteswara Rao & others vs State of Andhra Pradesh**', AIR 2010 SC 589, it was observed by the Apex Court that the High Court has to appreciate the judgment of the Trial Court against the weight of the evidence and interference should be rare and in exceptional cases.

12. Keeping the said principles in mind and after examining the record, this Court is of the opinion that nothing as such could

persuade us to come to the conclusion that the findings recorded by the Trial Court were perverse in any manner, which would warrant interference. Thus, grant of permission for leave to appeal to the complainant is not liable to be allowed since all aspects have been duly considered with the evidence of the witnesses being discussed to come to a logical conclusion that the benefit of doubt had rightly been extended to the accused in the facts and circumstances. Resultantly, we dismiss the application for leave to appeal, as there is no merit in the argument raised by the learned Senior Counsel.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

April 20, 2022
Naveen

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No