

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

223-CRM-A-337-2019 (O&M)

Date of Decision: 12.12.2022

Ram Kumar Gaina

... Applicant

VS.

Rajender

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Sunil Kumar, Advocate for
Mr. Jasbir Mor, Advocate for the applicant

Sandeep Moudgil, J.

This application under Section 378(4) CrPC read with Section 482 CrPC has been filed by the applicant seeking leave to appeal against the judgment dated 15.09.2018 passed by learned CJM, Bhiwani, vide which the complaint, filed by the applicant, under Sections 427/506 IPC has been dismissed and the respondent has been acquitted on the ground that the applicant has not been able to prove its case against the respondent beyond reasonable doubt.

In the complaint, it is averred that applicant had sown cotton (Kapas) crop in his field. In the intervening night of 19/20-08-2013, at about 9.00 pm, respondent had sprinkled poisonous chemical spray in three kanals of land of the applicant and when the applicant reached there and asked the respondent about the same then he kept mum and went away from there. Respondent was caught hold off by the applicant then he scuffled with the applicant. The members of the panchayat also saw the destroyed crop of the applicant. Respondent threatened to kill him and his family, if he initiates

any process against the respondent. Eventually, a complaint was filed, which has been dismissed vide the impugned judgment dated 15.09.2018.

Learned counsel for the applicant has relied upon the statement (Annexure A1) of Krishan Kumar as CW2 stating that he found the respondent standing with spray machine and that spray of some poisonous chemical was made in the cotton crop. It is averred that the statement of CW2 was disbelieved because he did not appear for evidence after framing of charges and was subsequently won over by the respondent.

Learned counsel for the applicant has also averred that the trial court has wrongly disbelieved statement of Satyavir (Annexure A2) who, in his capacity as SDO, has duly confirmed in his evidence that the crop of the applicant was found destroyed.

It is further urged that the trial court has erred in not appreciating the fact that no girdawari was conducted nor any record was produced to show that crop of other farmers was also destroyed on account of some natural calamities or disease.

Having heard ld.counsel for the applicant and going through the case file, this Court is of the considered opinion that there is no illegality or infirmity in the judgment passed by the trial court.

The trial court rightly observed that complainant has not produced the eye witness of the occurrence namely Krishan Kumar in the witness box for cross-examination during the pre-charge evidence and thus, his testimony so recorded in the preliminary evidence prior to the summoning of the accused can not be considered in the absence of cross-examination and except the sole testimony of the complainant, there is no evidence to show

that accused was seen while sprinkling chemical on the crop of the complainant. It was rightly held that the evidence of this witness is hearsay evidence, which is not admissible in law as none of the witnesses had seen the accused while sprinkling chemical on the crop of the complainant.

On the basis of Ex.D1 to Ex.D6 proceedings of the police, the trial court rightly came to the conclusion that the allegations levelled by the complainant against the accused about destroying of his crop were found false by the police and complaint was found to have been moved by the complainant because of previous enmity just to harass the accused and in that respect the contents of the complaint that police did not take any action upon the complaint of the complainant are false.

That apart, Satyavir Singh, SDAO PW3 (in pre-charge evidence) has testified about the cause of the destruction of the crop, and he also had not seen the accused while doing chemical spray on the crop of the complainant. His evidence was only of corroborative nature and as such cannot be taken to prove the case when eye witness account of the occurrence is lacking in this case.

In view of the above, this Court is of the considered view that no fault is found with the judgment passed by the trial court and as such the present application seeking leave to appeal.

Dismissed.

12.12.2022
V.Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No