

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

2023:PHHC: 092874

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CRM-A-913-MA-2013(O&M)
Date of Decision: 15.05.2023

SURENDER KUMAR

... Appellant

VERSUS

RAKESHWAR SINGH AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Deepak Arora, Advocate
for the appellant.

Mr. R.S. Manhas, Advocate
for respondents No.1.

None for remaining respondent(s).

SANDEEP MOUDGIL, J. (ORAL)

1. The instant application has been filed for seeking leave to prefer an appeal against the judgment dated 09.07.2013 passed by the Judge, Special Court, Pathankot (under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act, 1989, whereby, the respondents have been acquitted of the charges framed against them under Sections 3/4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act, 1989.

2. The brief history of the case is that the appellant-complainant is the Sarpanch of village Habit Pindi. On 29.10.2003, the by elections for the post of Panch were being held in Government Primary School, at Village Habit Pindi. The elections were being conducted peacefully, when at about 12.30 P.M. the accused persons came there and created a scene over there. They quarreled with the polling agent and snatched polling box and stamps from them and tried to

poll bogus votes in favour of their favourite candidate. When the appellant/complainant reached there and tried to stop them, they caused injuries to him and also used abusive remarks against his caste and religions. The complainant moved police complaints but no action was taken thereupon. Then the complainant- appellant approached the High Court by way of filing CRM-M-52440-2003, in which the police authorities were directed to look into the matter and take appropriate action. However, the police did not take any action, whereupon the complainant-appellant filed a criminal complaint before the Illaqa Magistrate and in pursuant to the preliminary evidence, the accused persons were summoned to face trial.

3. Upon finding *prima facie* evidence, the accused-respondents were charged sheeted for the commission of offences punishable under Sections 3/4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act, 1989. Both the parties led their respective evidence and after conclusion of the trial, the accused-respondents were acquitted of the charges framed against them vide judgment dated 09.07.2013 passed by the trial Court. Aggrieved thereof, the appellant-complainant has filed the present application seeking leave to prefer an appeal against the impugned judgment.

4. After considering the evidences led by both sides, the trial Court acquitted the respondents-accused persons of the Notice of Accusation served upon them. Hence, the present appeal.

5. Learned counsel for the appellant-complainant has vehemently argued that the learned trial Court has committed material illegality and irregularity in passing the impugned judgment dated 09.07.2013. He further argued that the learned Court below has failed to appreciate the evidence led by the appellant-complainant despite that the appellant-complainant has proved his

case supported by cogent and clinching evidence. However, the trial Court did not bother to appreciate the same and passed the impugned judgment. He further argued that the trial Court has acted in a ministerial manner and passed a judgment of acquittal without considering the facts and evidence brought on record.

6. Per contra, learned counsel for the respondents-accused opposed the arguments raised by the learned counsel for the appellant-complainant and submitted that the impugned judgment dated 09.07.2013 does not suffer from any illegality or impropriety and as such, the same deserves to be upheld and the application in hand is liable to be dismissed.

7. No other submission was made by learned counsel for the respective parties.

8. Heard the learned counsel for the respective parties at length and have gone through the material available on record with their able assistance.

9. In order to prove its case, the complainant examined one Santokh Raj as PW-1, Raj Kumar as PW-2 and himself as PW-3 and also produced on certain documents on record including the newspaper Ex.C6, which allegedly published the incident in question and Ex.C7- the caste certificate in order to prove the appellant-complainant belongs to Scheduled Caste. On the other hand, the respondents-accused examined DW1- Vikram Agnihotri, Clerk CDPO Office, Narot Jaimal Singh and DW-2 Tarsem Singh as DW-2. After hearing the counsel for both the sides and going through the material produced on record, the trial Court passed the impugned judgment while acquitting the respondents-accused. It is pertinent to mention here that during the trial, on the accused persons namely Pritam Chand had died and accordingly, the

proceedings qua him stood abated and were ordered to be dropped vide order dated 02.03.2013.

10. The Court further held that it being a case under a Special Act, the standard of proof must be very high, but the appellant-complainant has not led any cogent and clinching evidence. Rather the evidence led by the appellant-complainant is very weak. First of all, the news published in any newspaper is not a conclusive proof and is not admissible in the eyes of law. Secondly, the appellant-complainant has not proved the caste certificate Ex.C7 as per law. He has not bothered to examine any official from the office from where such certificate was obtained. It needs mention here that PW-2 Raj Kumar examined by the appellant-complainant was an interested witness and as such his testimony was not trustworthy.

11. It is well settled law that merely exhibiting a document does not prove its contents. The document must have been proved in a manner known to law. Furthermore, the evidence of PW-2 is discrepant and has lost its value. PW-2 has specifically deposed in his evidence that after casting his vote, he had gone to his house at about 12.00 (noon). If it was so, then how can he claim himself to be present at the spot, where the incident in question had occurred at 12.30 P.M. (as per the version of the complainant himself).

12. This Court also cannot ignore certain material aspects such as the respondent-accused have examined the official from the office of CDPO, Narot Jaimal Singh, and proved the certificate to the effect that no untoward incident had taken place during the polls.

13. Above all there is a delay of three months in lodging the complaint against the alleged occurrence of 29.10.2003 and said delay remains unexplained throughout. The prosecution did not examine any pooling agent or

contested candidates as well as pooling staff. PW1 and PW2 are the interesting witnesses, whereas the newspaper cutting to support the alleged incident has also not been proved as per law. Neither any official true prove the certificate and its genuineness was summoned and as such mere exhibiting the same would also not make the document trustworthy i.e., Ex. C-7 apart from that all the witness of prosecution namely PW-1, PW-2 and PW-3 belong to only one group and the discrepancies therein added with the delay of 92 days in lodging the complaint are sufficient grounds to disbelieve the case of the complainant-appellant.

14. Further there is no evidence to suggest another essential ingredient to invoke the provisions of Section 3/4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to demonstrate that there was any intention to humiliate the appellant-complainant in a place within public view. All these essence could not be established after inconclusive evidence was led on his behalf.

15. After giving considerable thought and scrutinizing the evidence as per the requirements of the Statute of 1989, wherein the standards of proof very high in such like cases, I do not find infirmity, illegality, perversity or impropriety in the judgment of acquittal dated 09.07.2013 and as such this appeal lacking in merit is hereby ordered to be dismissed.

16. Ordered accordingly.

(SANDEEP MOUDGIL)
JUDGE

15.05.2023
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No