

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

CRM-A-1171-MA-2017

Date of Decision: 05.10.2023

Ami Lal

... Applicant

Versus

Birender and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Jasmeet Singh Bhatia, Advocate,
for the applicant.

JASGURPREET SINGH PURI, J.

1. The applicant – Ami Lal has filed this application under Section 378(4) Cr.P.C. seeking leave to appeal against the impugned judgment dated 22.03.2017 passed by the Additional Chief Judicial Magistrate, Palwal whereby the accused were absolved of the charges levelled against them.

2. Brief facts of the case are that the complainant alongwith one Sarabjeet son of Ginna had purchased a house measuring 105 square yards falling in Rect. No.173, Killa No.7/1 vide sale deed dated 18.07.2005 from Bachu, who was co-owner/co-sharer to the extent of 7/152 share which was alienated by him vide the aforesaid sale deed. Therefore the complainant and Sarabjeet became co-owner/co-sharer alongwith the other co-sharers, out of which some of them are the accused in the present case.

3. The complainant alleged in the complaint that the accused wanted to forcibly take possession of his aforesaid house and threatened to implicate him in a false case and in fact an FIR No.457 dated 27.07.2005 under Sections 451, 354 IPC was got registered against the complainant by

the daughter of one of the accused persons, but the same was subsequently cancelled as he was found to be innocent. The complainant further alleged that on 08.08.2005, the accused broke the common wall of his aforesaid house and stole the articles which were lying therein and after the lapse of a period of three years after the aforesaid incident, FIR No.467 dated 29.12.2008 under Sections 448, 506, 427, 379 IPC was registered against the accused persons. The aforesaid FIR was also cancelled as the allegations contained therein were found to be untrue. Therefore the complaint was filed under Sections 148, 149, 379, 427, 448, 454, 506, 120-B IPC against the accused.

4. The complainant led pre-charge evidence and examined CW1 Shyam Lal, CW2 Ami Lal (complainant himself) and CW3 Hukam Singh, IPS Retired/SP. After considering the arguments advanced by learned counsel for the complainant and going through the entire material on record, learned trial Court vide order dated 18.03.2016 discharged accused No.12 and 13 as no previous sanction was sought for and the remaining accused were summoned only under Section 448 IPC. After recording the statements of the accused, the case was fixed for defence evidence and arguments. However, no defence evidence was led by the accused.

5. After hearing arguments advanced by learned counsel for the complainant and learned defence counsel, the learned trial Court came to the conclusion that on the date of incident i.e. 08.08.2005 the complainant and Sarabjeet son of Ginna were the co-owners of the property measuring 105 sq. yds, which was joint with the property of other co-sharer some of them are the accused. A civil suit for partition of the aforesaid property was filed wherein a preliminary decree was passed but the property has not yet been partitioned, which implies that on the date of alleged incident, the

property was joint. The learned trial Court has also come to the conclusion that on the date of alleged incident, both the complainant and Sarabjeet were the co-owners, but only one of them (Ami Lal, complainant) has moved the instant complaint. The learned trial Court has also observed that only the eye witness has deposed in his cross-examination that no criminal trespass took place in front of him. The learned trial Court further observed that though the complainant had purchased the house in question but he was never in possession thereof and thus the question of his ouster from the house does not arise at all and that the dispute between the parties is civil in nature. Accordingly, the learned trial Court held that the case of the complainant can not be said to be proved beyond reasonable doubt and absolved the accused of the charges framed against them.

6. The aforesaid judgment of acquittal dated 22.03.2017 has been assailed by the complainant before this Court by seeking leave to appeal.

7. I have heard learned counsel for the applicant-complainant and also perused the record.

8. This is an appeal against acquittal. Interference in an appeal against acquittal is called for only if the judgment under appeal is perverse or based on misreading of the evidence.

9. Learned counsel for the applicant-complainant argued that the respondents-accused have committed the offence of criminal trespass and stole the articles lying in the house of the complainant. Learned Counsel for the applicant-complainant contended that the learned trial court has failed to appreciate the oral as well as documentary evidence available on the file. It was also contended by the learned counsel for the applicant that the learned trial Court has not taken into consideration the entire evidence in its true perspective.

10. This Court does not find any fault in appraisal of oral as well as documentary evidence available on the file by the learned trial Court. In fact, the learned trial Court has dealt with the matter in question carefully discussing each and every point minutely.

11. This Court finds no illegality in the findings of the learned trial Court when it says that the complainant has failed to prove criminal trespass in the house and also that while framing charge against the accused, no offence under Section 379 IPC as alleged by the complainant against the accused was found to have been made out. It was also observed by the learned trial Court that both the FIRs i.e. FIR No.457 dated 27.05.2005 under Section 451, 354 IPC lodged by the daughter of one of the accused against the complainant and FIR No.467 dated 29.12.2008 under Sections 448, 506, 427, 379 IPC lodged by the daughter-in-law of the complainant against the accused have already been cancelled finding the same to be untrue. It was also observed by the learned trial Court that various civil and criminal litigation are going on between the parties. Therefore the findings recorded by the learned trial Court that the complainant has failed to prove that the respondents-accused have committed the offence of criminal trespass cannot be said to be perverse or misreading of evidence warranting interference by this Court.

12. For the reasons recorded above, finding no merit in the application for leave to appeal, the same is dismissed.

(JASGURPREET SINGH PURI)
JUDGE

05.10.2023
sk/rakesh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No