

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

224.

CRM-A No.1915-MA of 2016 (O&M)

Date of Decision:20.11.2023

Dalbara Singh

... Applicant/Appellant

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Balbir Singh Saini, Advocate
for the applicant-appellant.

Mr. IAS Sabharwal, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present application has been preferred by the applicant-complainant under Section 378 (4) of the Criminal Procedure Code, 1973 against the judgment dated 09.08.2016 passed by the learned Judicial Magistrate 1st Class, Fatehgarh Sahib whereby the complaint filed under Sections 323, 324, 506 IPC was dismissed and respondents No.2 and 3/accused were acquitted.

2. In brief, the facts are that on 19.06.2009 at about 9.30 AM, the complainant was assaulted by accused persons namely Joginder Singh, Naib Singh, Baldev Singh, Kulbir Singh, Ajitpal Singh and Rupinder Singh @ Dimple, as some property dispute was ongoing between the complainant and assailant party. The complainant narrated the entire incident to the panchayat of the village and accordingly, a meeting of the village panchayat was convened to compromise the matter between the parties. However, instead of compromising the matter, the accused persons again assaulted the complainant in presence of the panchayat members and other villagers wherein injuries were suffered by him. He was

taken to the Civil Hospital, Fatehgarh Sahib by the panchayat members. Since the police did not take any action, he filed the criminal complaint in question.

3. On finding a *prima facie* case against the accused persons under Sections 323, 506 IPC, they were called to face trial and notice of accusation was framed accordingly.

4. In order to prove his case, the complainant examined five witnesses. Statements of the accused persons were recorded under Section 313 Cr.P.C. and all incriminating evidence was put to them to which they pleaded false implication and claimed innocence. However, no defence evidence was led by them. After appreciating the entire evidence on record, the learned trial Court acquitted respondents No.2 and 3-accused while convicting other accused persons.

5. Learned counsel for the applicant-complainant contends that the applicant-complainant was assaulted in the presence of the village panchayat and therefore, the ocular version of CW2 Kirpal and CW3 Kulwant Singh, Sarpanch cannot be discarded. The injuries suffered by the applicant-complainant were corroborated by the testimony of CW5 Dr. Kushmit Singh Gill but the learned trial Court completely ignored the same. It is further contended that the learned trial Court has gravely erred in acquitting respondents No.2 and 3 as they did not lead any evidence in their defence and therefore, the evidence led by the complainant remained unrebutted.

6. Having heard the counsel appearing for the applicant-complainant and after perusing the record of the case with his able assistance, this Court finds no merit in the arguments raised by him.

7. The testimony of CW4 Kirpal Singh in his examination-in-chief stated that respondents No.2 and 3 were not involved in the occurrence before the village

panchayat. Further in the complaint Ex.D1 dated 19.06.2009 filed by the Gram Panchayat of Village Sidhwan before the SHO, Melupur, District Fatehgarh Sahib, names of Baldev Singh, Naib Singh, Kulbir Singh and Dimple were mentioned as persons, who assaulted the complainant in front of village panchayat and only these persons tendered unconditional apology to Gram Panchayat for assaulting the complainant in the presence of members of Gram Panchayat, as is evident from compromise deed Ex.D2 dated 01.07.2009. There was a civil litigation pending between the complainant and accused persons. Respondent No.2 Joginder Singh is the brother of the complainant and respondent No.3 Ajitpal Singh is son of respondent No.2 and therefore, the learned trial Court has rightly observed that the possibility to rope in aforesaid persons as accused at the behest of complainant cannot be ruled out.

8. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (See ***H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415***). A Division Bench of this Court in the judgment passed in ***State of Haryana Vs. Ankit and others*** passed in CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched and fortified in favour of the accused after earning acquittal from the trial Court.

9. In view of the facts and circumstances of the case, this Court finds that learned counsel for the petitioner has failed to point out any perversity or illegality in the findings recorded by the learned trial Court, which warrants interference by this Court. As such, there is no merit in the present application and the leave to appeal is declined. Resultantly, the instant application stands dismissed.

(HARPREET SINGH BRAR)
JUDGE

November 20, 2023
Pankaj*

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No