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

CRM-A-2169-MA-2017 (O&M)

Date of decision:- 13.07.2023

Mohinder Singh

.... Applicant

VS

Lakhwinder Singh and others

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Tarunvir Singh Lehal, Advocate for the applicant.

Manisha Batra, J.

1. The instant application under Section 378(4) of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') has been moved by applicant Mohinder Singh with a prayer for grant of leave to file appeal against judgment of acquittal dated 23.02.2017 passed by Judicial Magistrate, Ist Class, Batala in complaint case No.9 of 2012 titled as ***Mohinder Singh Vs. Lakhwinder Singh and others***, whereby the respondents had been acquitted of charges of offences punishable under Sections 323, 326, 452, 342 read with Section 34 of IPC.

2. Brief facts of the case relevant for the purpose of disposal of this application are that the aforementioned criminal complaint had

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been filed by the applicant-complainant Mohinder Singh on the allegations that his son Amrik Singh had purchased a house situated within Lal Dora of village Basrawan, Tehsil Batala from sons and wife of Kundan Singh, who was the original owner of the said house and had died in the year 1993. It was alleged that eight persons named as accused in the complaint were trying to interfere in possession of the complainant and his family over this house and had tried to take forcible possession thereof and in this regard a complaint was filed before the police on 09.05.2011. It was alleged that on 25.05.2011, the accused named in the complaint along with one Ramanjit Singh, who had subsequently died, criminally trespassed into the house of the complainant at about 6 pm while being armed with weapons. The complainant had closed the door of his house but the assailants demolished the boundary wall of the same and entered inside. The accused Lakhwinder Singh had made an exhortation by saying 'fad lo jaano maar do', accused Bachitar Singh had given a dang blow on the right hand of his wife Jasbir Kaur and accused Bikramjit Singh (since declared proclaimed person) had hit on her neck. The complainant and his family members raised alarm, on hearing which the neighbours had gathered and had saved the complainant and his family members from the clutches of the accused. Thereafter, the accused fled away with their respective weapons. The complainant reported the matter to the police but no action was taken. Rather a false case was registered against him and his family members on the complaint of the accused. Therefore, he prayed for taking penal action against the culprits.

3. On presentation of the complaint, the case was fixed for producing preliminary evidence. The complainant examined 6 witnesses including himself and thereafter, learned trial Magistrate issued process against the present respondents i.e. accused- Lakhwinder Singh, Bachittar Singh and Bikramjit Singh though eight persons had been named in the complaint and the respondents were summoned to face trial for commission of offences punishable under Sections 323, 342 and 452 of IPC.

4. After procuring the presence of the respondents accused, pre-charge evidence was recorded by learned trial Court. The complainant produced 5 witnesses, namely, CW-1 Bikramjit Singh, CW-3 Amrik Singh, CW-4 Jasvir Kaur, CW-5 Lakhwinder Kaur and himself stepped into the witness box as CW-2. Thereafter the pre-charge evidence was closed.

5. On finding a prima facie case, the respondents-accused, Lakhwinder Singh and Bachittar Singh, were chargesheeted for commission of offences punishable under Sections 323, 326, 342 and 452 of IPC. The accused Bikramjit Singh had absented himself and was declared a proclaimed person.

6. In after charge evidence, the accused sought to further cross-examine CW-2 complainant Mohinder Singh and CW-4 Jasbir Kaur, and they were accordingly, further cross-examined.

7. Statements of accused were recorded under Section 313 of Cr.P.C. wherein they claimed themselves to be innocent and pleaded false implication.

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8. In defence evidence, the respondents-accused tendered Ex.D-1 copy of charge sheet filed against them in case bearing FIR No. 50 dated 27.05.2011, titled as ***State Vs. Mohinder Singh and others.***

9. On appraising the evidence produced on record and considering the contentions raised by both the sides, the learned trial Magistrate vide judgment dated 23.02.2017, acquitted the respondent-accused of the charges as framed against them by holding that the applicant-complainant had failed to prove his case against them.

10. Feeling aggrieved, the applicant has filed the instant application for granting him leave to file appeal as against the judgment of acquittal of learned trial Court.

11. It is submitted in the application and it was argued by learned counsel for the applicant that the impugned judgment of acquittal was liable to be set aside as the findings as given by learned trial Court were not sustainable in the eyes of law, the same being based on conjecture and surmises. The learned trial Court did not apply its judicious mind and did not appreciate the overwhelming evidence produced on record by the applicant which fully connected the respondents accused with the offences for which they had been chargesheeted. He argued that the learned trial Court had committed a grave error in ignoring the medical evidence which proved that the injured Jasbir Kaur had sustained grievous as well as simple injuries on her person . The oral evidence lead by the applicant, injured Smt. Jasbir Kaur and eye witnesses was sufficient to prove that the

respondents had criminally trespassed into his house and had caused injuries to his wife and had wrongfully restrained them, but this fact had not been properly appreciated. With these broad arguments, it was submitted that the application deserved to be allowed.

12. We have given due deliberations to the contentions as raised by learned counsel for the applicant and have scrutinized the material available on record minutely. The applicant-complainant has sought leave to file appeal against judgment of acquittal of respondents. The well settled proposition of law is that though the appellate Court has full power to reappreciate and reconsider the evidence upon which the order of acquittal is founded but it must bear in mind that in case of acquittal, there is total presumption in favour of the accused and the accused having secured an acquittal, presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court and further that if two reasonable conclusions are possible on the basis of evidence available on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court. While granting permission to file appeal or while entertaining an appeal against judgment of acquittal, the appellate Court is required to seek an answer to the question that whether evidence of the trial Court were culpably wrong, manifestly erroneous and demonstrably unsustainable. The appellate Court should interfere only when there exists perversity of facts and law. Reference in this regard can be made to **Sadhu Saran Singh v. State of U.P. and others**, 2016 (2) RCR (Criminal) 319 & **State of Maharashtra v. Fazal**

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Rehman Abdul, 2014 (7) SCC (Criminal) 01, wherein similar observations had been made. On applying the above enunciated principles of law to the peculiar facts and circumstances of the present case, on hearing learned counsel for the applicant at length and on having perused the material placed on record of learned trial Court, we are of the considered opinion that the present application does not deserve to be allowed and no case has been made out for grant of leave to the applicant-complainant due to the reasons to be discussed hereinafter.

13. The case of the applicant was that on 24.05.2011, the respondents-accused along with 6 more persons had criminally trespassed into his house and had wrongfully restrained himself and his family members and had voluntarily caused simple as well as grievous injuries to his wife Smt. Jasbir Kaur. First of all it would be relevant to mention here that though it was submitted in the complaint that he had reported the matter to the police and no action was taken by it but no material whatsoever had been produced on record to show that the applicant or his family members had moved any complaint before the police before filing complaint in the court. The complaint before Court was also filed after a period of 9 months from the date of the alleged occurrence and after a gap of 10 days from the date when challan was presented against the applicant and his family members in FIR No. 50 dated 27.05.2011. This delay of 9 months in filing the complaint had not at all been explained by the applicant. It is well settled proposition of law that delay in filing a complaint or reporting

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the matter to the police gives rise to suspicion and puts the Court on guard to look for a plausible and acceptable explanation for the delay. The quick information/report is a towering circumstances that goes a long way to assure the veracity of the story of the complainant, as in such cases, there cannot be any time to create and deliberate a false case against the accused. The object of quick filing of complaint is to give earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them as well as the names of the witnesses. Delay in filing complaint or reporting the matter to the police can often result in embellishment which is a creature of after thought and on account of delay, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. Therefore, it is incumbent that the complaint should have been filed by the applicant in time. However, apart from the fact that there was inordinate delay of 9 months in filing the complaint, the applicant failed to give any plausible explanation whatsoever for the said delay and due to this fact, in our opinion, a shadow of reasonable doubt had certainly been created over the story as narrated by the applicant-complainant and the benefit of same certainly went in favour of the accused-respondent.

14. Apart from this, on perusal of record, it has also been revealed that the medical evidence produced on record by the applicant-complainant could not be stated to be sufficient and convincing enough to prove the allegations that Smt. Jasbir Kaur wife

of the applicant had sustained any grievous injury. CW-1 Dr. Vikramjit Singh, who had conducted medico legal examination of Smt. Jasbir Kaur on 24.05.2011 produced on record Ex. CX, a report regarding conducting her radiological examination and opined that she had sustained a grievous injury on a phalanx of her right index finger but, he admitted that he had not seen the X-ray film and had given his opinion on the basis of this report only. The Doctor who had conducted radiological examination of Smt. Jasbir Kaur had not been examined as a witness. It is well settled principle of law that the X-ray taken by the radiologist to sustain the nature of the injury must be produced and proved before a Court of Law and on the basis of the evidence given by the Radiologist, the gravity and the nature of the injury has to be subscribed as clearly laid down under Section 320 of IPC. Reliance in this regard can be placed upon the case reported as **Nallasingam and others v. State**, 1993 (1) M.L.J. (Criminal) 6 wherein the injured had claimed that he had sustained fracture in the bone. In the absence of the X-Ray film and in the testimony of some doctor, it was held by the High Court of Madras that grievous injury was not proved by proving X-ray film and X-ray report on record which could specifically point out that the victim had actually suffered a fracture in the bone in order to bring the case under the requirement of Section 320 of IPC. Reliance can also be placed upon **Gurpreet Singh v. State of Punjab**, 2019 (2) Law Herald 1018, wherein the opinion of doctor was based on report of a Radiologist who was not produced before the Court. Even the X-Ray film on the basis of which

the injury was opined to be grievous in nature, was not produced on record. A Coordinate Bench of this Court had held that opinion of another doctor based on the report of Radiologist could not be taken to prove the guilt of the accused under Section 325 of IPC. Similarly in **Santoo v. State**, 1976 SCC OnLine All 267, X-ray report of injury caused to the complainant was prepared by “A”. The prosecution did not produce “A” before the Court. It was also not suggested that “A” was either dead or not available. A supplementary report was prepared by “B” on the basis of report prepared by “A”. It was held by a Bench of this Court that report of “A” was inadmissible in evidence and the evidence of “B” based on supplementary report of “A” was also inadmissible in evidence. Reliance can also be placed upon **Faizan Ahmed Abdul Wahab Shah v. State of Maharashtra**, 2014 (1) Bombay C.R. (Criminal) 643 wherein it was observed by High Court of Bombay that there could not be any presumption that grievous hurt was caused without formal proof of fact of fracture. The fact of existence of fracture could not be diagnosed and certified in the absence of proof of X-ray plates, unless the fact of fractured bones was perceivable barely of perception by naked eyes and sheerly by clinical examination. It is being vivid and palpable.

15. In view of the above discussed proposition of law, it is explicit that in the absence of x-ray film and further due to non-examination of the Radiologist, it could not be stated that Smt. Jasbir Kaur had in fact sustained any grievous injury and therefore, in our opinion also, no case for commission of offence punishable under

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Section 326 of IPC had been made out and learned trial Court had rightly held so. With regard to the second injury, it may be stated that as per medico-legal report Ex.C-1, it was only in the nature of complaint of pain in the neck. Meaning thereby that no external injury was found on the neck of Smt. Jasbir Kaur and on the basis of this report, even it cannot be stated beyond doubt that Smt. Jasbir Kaur had sustained any simple injury.

16. Further, with regard to the allegations levelled by the applicant that the present respondents along with six more persons had criminally trespassed into his house and had wrongly restrained himself and his family members, it may be mentioned that only three persons out of the persons named as accused in the complaint had been summoned by learned trial Court while issuing process, but the order passed by learned trial Court summoning only three persons had not been challenged. Meaning thereby, that he accepted that other persons as cited in the complaint had not participated in this occurrence as alleged by the applicant. The statements of the applicant, CW-4 Jasbir Kaur and CW-5 Lakhwinder Kaur are also contradictory with regard to the direction of the wall which had allegedly been demolished by the assailants. CW-5 had admittedly reached at the spot after the occurrence and therefore, she cannot be stated to be an eye witness. No photograph of the demolished wall had been produced on record. The learned trial Court had taken all these points into consideration while arriving at the conclusion that the applicant-complainant had failed to produce evidence of such nature

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which could be acted or relied upon beyond doubt to connect the respondents with the subject offences.

17. As such, in our opinion, learned trial Court had rightly come to the conclusion that the applicant had not been able to prove his case against the respondents. In view of the settled position of law and the facts and circumstances as noticed above, we do not find any merit in the present application and therefore, no leave can be granted to the applicant to file appeal against the judgment of acquittal of the respondents.

18. Accordingly, the application is dismissed.

(RITU BAHRI) (MANISHA BATRA)
JUDGE JUDGE

13.07.2023
pooja saini

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