

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

**CRM-A-2362-MA-2017
Date of Decision: 26.05.2023**

BHAGWANT SINGH

...Applicant

Versus

RAVI @ RAVINDER KUMAR AVASATHI AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. G.L. Bajaj, Advocate
for the applicant.

HARSH BUNGER, J.

Applicant-Bhagwant Singh has filed this application under Section 378(4) of the Code of Criminal Procedure (for short 'the Cr.P.C.), seeking leave to file appeal against judgment dated 21.07.2017 passed by learned Judicial Magistrate Ist Class, Ferozepur; whereby, the respondents-accused were acquitted of the charges framed against them.

2. Briefly, the present applicant-complainant filed a complaint under Sections 323, 148 and 149 of the Indian Penal Code (for short 'the IPC') against the respondents-accused, wherein it was alleged that he has been serving in the Punjab Home Guards since the year 1992 and has remained on duty at various stations and lastly, he was serving in the Office of DIG Police Range, Ferozepur; where, he had suffered some injuries on his backbone, while he was in service around 1½ year back and since then, he was under continuous treatment from Civil Hospital, Ferozepur and one private doctor Daljit Singh, outside Makhu Gate, Ferozepur City. As per the complaint, the complainant was recommended to wear a medical waist belt permanently, which supports the backbone and hip cage. It is stated in the

complaint that on 25.01.2013, when the complainant was deputed at Police Station Sadar, Ferozepur then with regard to some election duty at Tripura, he was called at Office of Punjab Home Guards and on 27.01.2023, he along with his other colleagues went to Amritsar Railway Station on police vehicles in order to go to Tripura. As per the complainant, he appeared before the DIG Punjab Home Guards and apprised him of his illness; whereupon, he was returned back to Ferozepur from Amritsar by cancelling his Tripura election duty; therefore, he got deposited his rifle with the Ammunition Company, having its office at Malhotra Shop and reached Police Station Sadar Ferozepur by marking his attendance on 28.01.2013. It is alleged that on 02.02.2013, Buta Singh MHC, Punjab Home Guard told the complainant that he has been called in the office; accordingly, the complainant went to the Office of accused at Housing Board Colony, Ferozepur City, where respondent-accused No.1 Jagir Singh, Clerk told the complainant that he had been suspended without informing any reason with effect from 28.01.2013. It is stated that the complainant was never served with any suspension letter. The complainant tried to approach the respondent-accused No.1 but he was not approachable. On 08.02.2013, the complainant came to know that respondent-accused No.1, who had suspended the complainant being Incharge of the Battalion, had come to Ferozepur for his personal work as his mother was admitted at Amritsar Hospital; whereupon, the complainant is stated to have gone to the Office of Punjab Home Guards at Housing Board, Ferozepur City where all the respondents-accused persons were present. It is alleged that the complainant requested the respondent-accused No.1 to re-instate him and also apprised him of his health status by showing his medical record; however, respondent-accused No.1 had demanded illegal gratification of

Rs.3,000/- from him but the complainant showed his inability to pay the same. It is alleged that instead of considering the request of the complainant, respondent-accused No.1 called the other respondents-accused No.2 to 5 and directed respondent-accused No.4 to bring a *danda*; whereupon, the complainant was given 4-5 *dang blows* on his hips and waist and when the complainant brought back his left hand then *dang* hit on his left hand as well as the back of his thigh. The complainant is stated to have shouted and the respondents-accused threatened him not to inform this episode to anybody, otherwise he shall have to face dire consequences. As per the complainant, he went to his village and since he was unable to bear the pain, then one Karam Chand of his village got him admitted in Civil Hospital, Ferozepur; where he remained under treatment w.e.f. 10.02.2013 to 18.02.2013 and his medical legal examination was conducted by the doctor. It is stated that police of Police Station, City Ferozepur came to the hospital and recorded the statement of the complainant; however, they entered only DDR No.33 dated 10.02.2013 and refused to take any action against respondents-accused. The representation submitted to various higher authorities by the complainant also failed to evoke any action; accordingly, the aforesaid complaint was filed before the Court of Judicial Magistrate Ist Class, Ferozpur.

3. After considering the preliminary evidence on record, all the accused were ordered to be summoned to face trial under Sections 323, 148 and 149 of the IPC.

4. In pre-charge evidence, the complainant examined Karam Chand as CW-1 and he himself stepped into the witness box as CW-2. Constable Sandeep Singh was examined as CW-3 and Dr. Kamal Kumar Arora, was examined as CW-4 and the remaining evidence of the

complainant was closed by order as he failed to conclude his evidence despite availing numerous opportunities.

5. Learned trial Court, vide its order dated 21.07.2017, dismissed the complaint filed by the complainant and discharged the accused from the offences, as alleged.

6. Learned counsel for the applicant submitted that the learned trial Court has wrongly and illegally dismissed the complaint filed by the applicant and discharged the respondents despite the fact that the applicant had proved his case against the respondents for committing an offence under Sections 323 and 149 IPC. It is submitted that the learned trial Court has not properly appreciated the evidence led by the applicant and the beating of the applicant by the respondents-accused was corroborated by the MLR and Rapat dated 10.02.2013. Accordingly, it is submitted that the impugned judgment dated 21.07.2017 passed by learned Judicial Magistrate Ist Class, Ferozepur, may be set aside and the respondents may be punished for committing an offence under Sections 323 and 149 IPC.

7. I have heard learned counsel for the applicant and have perused the paper book, with his able assistance.

8. The learned trial Court, after appreciating the evidence, dismissed the complaint of the applicant vide judgment dated 21.07.2017 and discharged the respondents-accused, by observing as under :-

“9. In the considered and confirmed opinion of the court, the complainant has not been able to prove his allegations against the accused. At the very outset, it is pertinent to mention here that this case relates to the dispute amongst members of armed forces in which complainant is a Punjab Home Guard Volunteer and accused no.1 is a Battalion Commandant and the other accused are his Comrades. The relation between the

officers in armed forces and their juniors is akin to father and son and for safety and welfare of the entire nation and for promoting discipline among the armed forces the orders of superiors in armed forces cannot be ignored at all. The instances of beatings by superiors of inferior officers are very rare as the superior officers command huge respect among its comrades are usually graceful. As the matter in hand could have huge repercussions as wrong and wasteful prosecution of officers could have promoted anarchy amongst the forces. So, the court was very circumspect in framing the charges against the accused because if superiors are prosecuted in courts such as Battalion Commandants by their employees Home Guards and the matter is allowed to be dragged without any concrete evidence against the accused, it would hamper the spirit of armed forces. In this backdrop now we will move on to the facts of instant case.

In the case in hand, complainant has himself alleged that he was suspended and in that connection he went to meet accused No.1 in his office on 8.2.2013 and there he was given beating but no other person from his own Battalion was cited by him as witness who could have deposed regarding the incident. Other witness Karam Chand is not the witness of the occurrence which is clear from his evidence which is hearsay evidence as he himself stated in his examination in chief that he was told by the complainant about the facts after two days of the occurrence that he was given beating by the accused. So we were left with only one witness of the occurrence i.e. complainant himself. So to place only reliance on his testimony his evidence should have been unimpeachable because he is interested witness as he was suspended by the accused no.1. So naturally he was having grudge against him and also could have wanted to exert pressure on him so that his suspension could be revoked. He suffered the statement to the police on 10.2.2013 i.e. after

two days of occurrence when he was not seriously or grievously injured at all. Moreover, he was not able to prove MLR on the file and in fact MLR goes against him only. He has stated in his cross-examination that on the day of occurrence his injuries were oozing blood. But, however, MLR clearly shows that no cut was received by him as per his own MLR. The MLR Ex. CW5/A (it was earlier exhibited in preliminary evidence) clearly reveals that his injuries are not result of anybody. He complained of pain in his lower back but, however, he has himself stated that he received the said injury in the residence of DIG UmraNagal 1-1/2 years prior to the alleged occurrence. Injuries No.3 and 4 were only complaints of pain on his buttocks. No injury mark of any weapon was revealed by Doctor and injury No.2 was pain and swelling on his left wrist. But again no visible injury mark was there. The important thing in this case is that he subjected himself to medical examination on 10.2.2013 and according to Doctor which is in the MLR itself she has opined that probable duration of injuries is within 24 hours but however, as per him he received injuries during day time on 8.2.2013. No doubt, he has not proved the MLR but the same can be read against him and not in his favour. So the allegations of complaint regarding beating by dang are not conceivable at all and the story itself drafted by him appears to be moonshine. He stated that accused No.4 brought the danda on instructions of the accused no.1 and handed over the same to accused no.2, who handed over the dang to accused no.1. If dang was meant for accused no.1, accused no.4 would have directly handed over the same to accused no.1. What was the fun of passing the same through three hands. So, the allegations on the face of it appear to be fabricated. Regarding demand of Rs.3000/- as bribe also again appears to be just a trick to defame the accused as in his earlier statement

given to police which is rapat no.33 dated 10.2.2013 this fact has not been mentioned.

10. In the light of above discussion, the complainant has not been able to prove his case as there is not even an iota of evidence which could raise suspicion against the accused. Therefore the accused are discharged from the offences.”

9. A perusal of the afore-stated findings recorded by the learned trial Court as well as from the perusal of the paper-book, it is borne out that the applicant has alleged that he was given beatings by respondent-accused No.1 in his office on 08.02.2013; however, in order to prove the said allegation, the applicant has not produced any witness from his own battalion, who could have deposed regarding the alleged occurrence. The applicant has examined one witness namely, Karam Chand, who is concededly not the witness of the occurrence. Apart from Karam Chand, the applicant has examined himself. Accordingly, in order to place reliance upon his testimony, the same should be of unimpeachable character. It is apposite to note here that as per the own case of the applicant, he was suspended with effect from 28.01.2013 and the said fact was stated to have been informed to the applicant on 02.02.2013 by Buta Singh MHC, Punjab Home Guards. Thus the possibility of the applicant nurturing a grudge against respondent-accused No.1, cannot be ruled out. Further, as per the own case of the applicant, he made a statement to the police on 10.02.2013 i.e. after two days of the alleged occurrence. The trial Court has referred to cross-examination of the applicant, wherein, it is noticed that the complainant had stated that on the day of occurrence, blood was oozing from his injuries. However, as per the MLR, there was no cut upon the applicant. No injury mark of any weapon was revealed by the doctor and no visible injury mark was there. Still further, as per the Medico Legal Report,

the probable duration of injuries is within 24 hours. However, according to the applicant, he received injuries during the day time on 08.02.2013. Thus, the applicant had failed to prove the alleged injuries suffered by him in accordance with law. Further, the allegations regarding demand of Rs.3,000/- as bribe is also not made out as the said fact does not find mention in Rapat No.33 dated 10.02.2013, which has been clearly noticed by the learned trial Court.

10. In '**Mrinal Das & others v. The State of Tripura, 2011(9) SCC 479**', Hon'ble Supreme Court, after looking into many earlier judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

“An order of acquittal is to be interfered with only when there are “compelling and substantial reasons”, for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed.”

11. In '**Allarakhak.Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748**', Hon'ble Supreme Court held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court. This view has been reiterated in **State of Goa v. Sanjay Thakran 2007(3) SCC 755** and **Chandrappa v. State of Karnataka 2007(4) SCC 415**.

12. The perusal of the findings given by learned Magistrate shows that these have been given as per evidence and law. In no way, the findings

can be held as perverse or against the evidence and law. Applicant-complainant had miserably failed to show any error of law or on facts on the basis of which interference can be made by this Court in the judgment under challenge.

13. When the findings given by the trial Court are considered in the light of the legal position indicated above; no interference is called for; especially when the applicant-complainant has failed to point out any substantial or compelling reasons for interfering in the impugned judgment dated 21.07.2017 passed by learned Judicial Magistrate Ist Class, Ferozepur.

14. No other argument was raised.

15. In view of the above discussion, the instant application is bereft of any merit and the same is accordingly dismissed.

16. All pending application/s, if any, shall stand closed.

May 26th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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