

CRM-33199-2014 in/and
CRM-A-1660-MA-2014

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-33199-2014 in/and
CRM-A-1660-MA-2014
Date of decision:-03.05.2023.

Jagdev Singh

.....Applicant

Versus

Durga Dass and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. G.B.S. Gill, Advocate for
Mr. Harinder Singh Virk, Advocate
for the applicant.

Mr. Binderjit Singh, Advocate
for respondents No.1, 2, 4 to 8.

VIKRAM AGGARWAL, J. (ORAL)

CRM-33199-2014

Prayer in this application is for condonation of delay of 1269 days in filing the present appeal. It has been averred in the application that the complaint filed by the applicant was dismissed by the trial Court, vide judgment dated 22.02.2011. On an incorrect legal advice, an appeal was filed in the Court of Sessions which was disposed of on 27.05.2014 holding that an appeal against acquittal in a complaint case was not maintainable in the Court of Sessions, after which the present application for leave to appeal along with application for condonation of delay was preferred. It has been averred that after the filing of the appeal before this Court, counsel for the applicant met with an accident which resulted in a further delay of 21 days in re-filing the appeal. It has been prayed that

this delay of 1248 days in filing the appeal and 21 days in re-filing the appeal be condoned.

The application has been opposed by way of a reply in which it has been submitted that the applicant is misleading this Court because after 27.05.2014 also, the appeal has not been filed in time.

I have heard learned counsel for the parties.

Admittedly, the matter remained pending before the Court of Sessions and ultimately on 27.05.2014, the appeal was disposed of being not maintainable after which the present appeal was preferred. It is settled position of law that matters should be heard on merits and should not be rejected on technicalities.

Keeping in view the facts and circumstances of the present case especially the pendency of the appeal before the Court of Sessions which was a wrong forum chosen by the applicant as a result of *bona fide* error, the present application is allowed. The delay of 1248 days in filing and 21 days in re-filing the present application for grant to leave appeal is condoned.

CRM-A-1660-MA-2014

1. Prayer in this application is for the grant of leave to file an appeal against the judgment dated 22.02.2011 passed by the Judicial Magistrate Ist Class, Phul (District Bathinda) vide which the complaint filed by the present applicant-complainant was dismissed and the respondents-accused were acquitted.

2. The facts, in brief, are that the applicant-complainant instituted a criminal complaint alleging that he and his wife-Amarjit Kaur were the owners of 3 acres of land in Village Kothaguru. Wheat crop and Barsin crop had been sown in the said land. On 08.08.2004, at about 2.00-3.00 P.M., while the applicant-complainant was present in his fields, the respondents-accused reached there in a

Jeep and Van. Harpal Singh was driving a combine-harvester. Durga Dass exhorted that the crop of the complainant be harvested. On this, Harpal Singh stated harvesting the crop with the combine-harvester. The respondents-accused forcibly entered into the fields of the complainant. On a hue and cry having been raised by the applicant-complainant, the owners of the neighbouring fields Surain Singh, Tota Singh and Balwinder Singh reached the scene of occurrence and tried to stop the respondents-accused from further harvesting the crop. A stay order issued by the Court was also shown by the applicant-complainant but the same was torn by the respondent-accused Manoj Kumar. When the applicant-complainant made an attempt to prevent the respondent-accused from further harvesting his crop, he was manhandled by Manoj Kumar, Krishan Singh and Harcharan Singh. The applicant-complainant was taken to the Police Post at Bhagta Bhaika by the said persons. The wife of the applicant-complainant then got him released from the illegal custody of the police on the same day at about 7.00 P.M. When the applicant-complainant went to his fields, he found that the respondents-accused had taken away the entire crop after harvesting the same thereby causing a loss of Rs.30,000/- to him. It was also stated that the motive behind the occurrence was that the respondents-accused namely, Durga Dass, Rajinder Kumar and Pawan Kumar intended to forcibly occupy land of the applicant-complainant on the basis of a forged and fabricated sale deed dated 04.06.1998. The matter was reported to the police but no action was taken.

3. After the preliminary evidence having been led, respondents-accused were summoned for offences punishable under Sections 323, 342, 427, 447 of the Indian Penal Code, 1860 (for short 'the IPC') read with Section 149 IPC. In the pre-charge evidence, the complainant and his wife-Amarjit Kaur appeared as

witnesses and accordingly charges were framed. In the post charge evidence also the complainant and his wife-Amarjit Kaur appeared as witnesses. The respondents-accused examined one Head Constable Dilbagh Singh and also tendered certain documents.

4. After considering the matter, the trial Court dismissed the complaint and acquitted the accused leading to the filing of the present application for the grant of leave to file appeal.

5. I have heard learned counsel for the parties.

6. Learned counsel for the applicant-complainant has submitted that the trial Court gravely erred in dismissing the complaint and acquitting the respondents-accused. Learned counsel has read the judgment passed by the trial Court and has made an effort to convince the Court that the judgment is not sustainable. It has been submitted that the complainant and his wife-Amarjit Kaur had duly stepped into the witness-box and had deposed in detail about the incident and despite this, the trial Court dismissed the complaint.

7. On the other hand, learned counsel representing the respondents-accused has submitted that there is no infirmity or illegality in the findings recorded by the trial Court since the applicant-complainant had miserably failed to prove his case against the respondents-accused.

8. I have considered the submissions made by learned counsel for the parties and, with their assistance, I have perused the paper-book.

9. As per the applicant-complainant, the incident took place on 08.08.2004 and the same was witnessed by one Surain Singh, Tota Singh and Balwinder Singh. In the preliminary evidence, apart from the applicant-complainant and his wife-Amarjit Kaur, Surain Singh appeared as CW-2.

However, neither in the pre-charge evidence nor in the post charge evidence, any eye-witness was examined. Only the applicant-complainant and his wife-Amarjit Kaur appeared as witnesses and deposed about the incident. The trial Court, therefore, was left only with these two statements.

10. Admittedly, civil litigation was also pending with regard to the land of the applicant-complainant which he had lost from two Courts when the matter was examined by the trial Court. In fact, during the course of arguments it has been pointed out that even the ***Regular Second Appeal No.4391 of 2012 titled as Jagdev Singh Vs. Pawan Kumar and others***, was dismissed by this Court vide judgment dated 25.03.2014 (Annexure R-1). Even the testimony of the wife of the applicant-complainant, namely, Amarjit Kaur was not relied upon by the learned trial Court, and rightly so, as she was not present at the spot and her evidence was only hear-say evidence. Insofar as the applicant-complainant is concerned, his statement did not inspire confidence. No other evidence of any kind was led to prove the incident as a result of which the trial Court rightly acquitted the respondents-accused.

11. I have not found any infirmity in the finding recorded by the learned trial Court. Even otherwise, it is settled law that Appellate Courts should be very slow in interfering in judgments of acquittal and judgments of acquittal should be reversed only if they suffer from perversity. Reliance in this regard can be placed upon the judgments passed by the Hon'ble Supreme Court in ***Sadhu Saran Singh Vs. State of U.P. and others, 2016(2) RCR (Criminal) 319, State of Rajasthan Vs. Madan alias Madaniya, 2019 CrI.L.R.(S.C.) 09 and Rabindra Kumar Pal alias Dara Singh Vs. Republic of India, 2011(2) SCC 490.***

In view of the aforementioned facts and circumstances, I do not find any merit in the present application for the grant of leave to appeal and the same is, therefore, dismissed.

May 03rd, 2023
Rekha

(VIKRAM AGGARWAL)
JUDGE

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