

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

**CRM-A No. 981 of 2022 (O&M)
Date of decision: 21st September, 2023**

Santosh

Applicant

Versus

Mahender and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Pardeep Duhan, Advocate for the applicant.

AVNEESH JHINGAN, J (Oral):

1. This is an application under Section 378(4) Cr.P.C. seeking leave to appeal against judgment of acquittal dated 18.10.2022 in Criminal Complaint No. 141-1 of 2014.
2. The brief facts are that complainant-Santosh (applicant) alleged that on 27.1.2013 at 6.30 PM, her brother-in-law (jeth) Mahender along with his son Kuldeep and three other persons entered her house, misbehaved with her, torn her clothes and inflicted injuries with a sharp edged weapon. The backdrop of the incident was that a civil litigation was pending between her and her brother-in-law.
3. It would be appropriate to note at this stage that initially the applicant got registered FIR No. 100 dated 28.1.2013 in which cancellation report filed by the police was accepted.
4. On appreciation of preliminary evidence, the respondents were summoned and charge-sheeted under Sections 452, 323, 324, 506 read with

Section 34 IPC.

5. In pre-charge evidence, the complainant herself appeared as CW1 and examined Anup Kumar-CW2, Dr. Monisha Gulati-PW3 and Sunil Kumar-PW4.

6. On failure of the complainant to prove the case beyond reasonable doubt, the respondents were acquitted.

7. Learned counsel for the applicant submits that the respondents were wrongly acquitted. The deposition of CW2-Anup Kumar and the doctor along with MLR was not considered in right perspective.

8. The trial court while acquitting the respondents considered that as per the investigation in FIR No. 100 dated 28.1.2013, it revealed that the doctor had not denied the possibility of injuries being self inflicted. As per the mobile location of the respondents, they were not present at the place of incident at the relevant time. The complainant admitted that the respondents were residing in Ambala for the last 14-15 years. There was a property dispute between the parties. As per the testimony of CW2-Anup Kumar, his house was 4-5 houses away from the house of the complainant and yet none of the neighbour from the houses near to the house of the complainant had come to know about the alleged incident and came forward to substantiate the allegations. The deposition of CW2-Anup Kumar was not found reliable considering that as per him, he was cultivating the land of the complainant however the complainant denied this fact.

9. There was material variation between the statements of the complainant and CW2-Anup Kumar. As per the complainant, on hearing the noises Anup Kumar opened the gate, entered the house and on seeing

him, the respondents fled away. As per CW2-Anup Kumar, he did not enter the house of the complainant, he gave a call standing outside the house and thereafter the respondents fled the spot.

10. Reliance on MLR for proving that the injuries were inflicted by the respondents is diluted. In cross-examination, Dr. Monisha Gulati stated that possibility of self inflicted injuries cannot be ruled out. Further that the incised wounds on different parts of the body of the complainant and their magnitude was so superficial that the examining doctor did not think proper to consider those injuries. The backdrop to the incident i.e. pendency of civil litigation vis-a-vis the property has dented the case of the complainant.

10. There is no quarrel on the proposition that at the stage of considering application for grant of leave to appeal, there cannot be re-appreciation of evidence.

11. There is no factual or legal error much less perversity in the impugned judgment. The view taken by the trial court is plausible one. No case is made out for interference by this court.

12. The application is dismissed.

[AVNEESH JHINGAN]
JUDGE

21st September, 2023
mk

1. Whether speaking/ reasoned	:	Yes / No
2. Whether reportable	:	Yes / No