

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

CRM-A-517-2019(O&M)

Date of Decision:-05.04.2024

Ompati.

.....Petitioners.

Vs.

Mahabir & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. V.P. Singh, Advocate for the Appellant.

Mr. Munish Kumar Garg, Advocate for the Respondents.

JASJIT SINGH BEDI, J.(ORAL)

The present application has been filed under Section 378(4) Cr.PC seeking grant of leave to appeal against the judgment of acquittal dated 12.04.2018 in a complaint filed under sections 427, 447, 323, 341, 294 and 506 IPC.

2. The brief facts of the case are that the applicant/complainant-Ompati filed the instant complaint with the allegations that her husband was an old person who remained ill. She (applicant/complainant) had 08 daughters 06 of whom were married. She was the owner of 247 Kanals 09 marlas of land at village Tosham on which many trees of “Janti” were standing. The accused were owners of the adjoining agricultural land and were hell bent upon to take forcible possession of her land. They had made indecent remarks against her daughters and had tried to outrage their modesty. On 18.03.2014 the accused persons entered into the land of the complainant and took away the trees of “Janti” after cutting them. When she tried to refrain them they gave her kick and fist blows.

Meanwhile, her daughters reached the spot and rescued her from the clutches of

the accused. On 19.03.20214 she moved an application to the SHO Police Station Tosham but no action was taken. On 4.4.2014 she (complainant) also moved a complaint to the SSP, Bhiwani but once again no action was taken. Subsequently, the instant complaint was filed.

3. On the basis of the complaint and the preliminary evidence led, the accused were summoned to face trial of having committed the offence under Sections 323 and 294 IPC. Pre-charge evidence was recorded after which the accused came to be chargesheeted. They pleaded not guilty and claimed trial.

4. Based on the evidence led, SDJM, Tosham found that the complainant had failed to prove her case beyond reasonable doubt and acquitted the accused/respondents vide judgment dated 12.04.2018.

5. The present application has been filed seeking grant of leave to appeal against the aforementioned judgment.

6. The Counsel for the applicant contends that the applicant had proved her case beyond reasonable doubt. Merely because no independent witness had been examined did not detract from the veracity of the case of the complainant. The Trial Court had failed to consider that the applicant had given an application to the SHO concerned on the very next day of the occurrence i.e. 19.03.2014. The applicant had also filed a civil suit for injunction seeking to restrain the defendants/accused from interfering in her possession. He, therefore, contends that the present application ought to be allowed and leave to appeal be granted.

7. The Counsel for the respondents on the other hand contends that the only one specific date of incident i.e. 18.03.2014 had been mentioned. It was strange that the complainant was of the age of 62 years had been attacked by both the accused of younger age, but no injury has been received by her. In fact there was no MLR on the file proving the injuries received by the complainant. No independent witness had been examined from the locality. The instant complaint had been filed after about 05 months of the occurrence. He therefore contends that no fault could be found with the judgment of acquittal sought to be impugned.

8. I have heard learned Counsel for the parties.
9. A perusal of the file would reveal that the complaint does not disclose any specific date, time and place of incident as has been mentioned other than the incident dated 18.03.2014. Even with respect to the said incident, there is no corroborative evidence in the form of the MLR. It does not stand to reason that the applicant/complainant who was of the age of 62 years and had been attacked by male accused of younger age and had not suffered any substantial injury. Despite the occurrence having taken place in public view, no independent witness from the locality was examined to support the case of the applicant/complainant. Further, the complaint had been filed after a delay of more than 05 months from the date of the incident. This delay creates a doubt regarding the veracity of the case of the complainant. In fact, the complaint dated 19.03.2014 does not even mention any incident dated 18.03.2014. Further there is no evidence that any trees were cut.
10. In view of the above, I find no merit in the application for the grant of appeal and the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

April 05, 2024
Vinay

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