

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-A-1132-MA-2013(O&M)

Date of order: 02.04.2024

Manjit Kaur

.....Applicant(s)

Vs.

Labh Singh & Others

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Harshit Jain, Advocate
for the applicant.

Mr. R.M. Sharma, Advocate
for respondents No.1 to 4.

Nidhi Gupta, J.

Present application under Section 378(4) Cr.P.C. is filed seeking grant of leave to file appeal by the complainant against judgment dated 25.10.2013 passed by learned Judicial Magistrate, 1st Class, Dhuri, in Complaint No.218 dated 02.04.2008 whereby respondents have been acquitted of the charges under Sections 341, 354, 323, 500, 506 and 34 IPC.

2. Learned counsel for the applicant inter alia submits that the learned trial Court is in patent error in dismissing the complaint of the applicant as the applicant has specifically asserted that the respondents had caught hold of her arms and hairs and slapped her on the mouth. It is submitted that under Section 323 IPC, it is very difficult to place on record any medical evidence regarding bodily pain which was suffered by the applicant due to the assault committed upon her by the respondents.

3. It is further submitted that the learned trial Court has wrongly held that testimony of witness CW2 cannot be relied upon because he is an interested witness being the son of the applicant/complainant. It is submitted that testimony of CW2 cannot be discarded merely on account of the fact that he is related to the applicant. CW2 had specifically deposed that Labh Singh had caught hold of hair of the applicant, Pawan Singh had caught hold of the applicant from her arms, and Kuldeep Singh had slapped the applicant on the mouth and thereafter, Raju had torn the clothes of the applicant. However, the said valuable testimony of CW2 has been discarded by learned trial Court merely on the ground that CW2 was the son of the applicant.

4. It is further submitted that learned trial Court has misread the evidence on record as the applicant had stated that she had moved an application to the SSP (Ex.C2), in which she had stated that Karam Singh, Baldev Singh and Gurpreet Singh came on the spot and rescued her. However, the learned trial Court has wrongly held that the applicant made improvements in the complaint. It is further submitted that the mere testimony of the applicant ought to have been enough to implicate the respondents, however, the learned trial Court has failed to consider this aspect of the matter.

5. No other argument is made on behalf of the applicant.

6. I have heard learned counsel for the applicant and perused the case file in detail.

7. Brief facts of the case are that the applicant-complainant sought the prosecution of the accused/respondents for the offences punishable under section 341, 354, 323, 500, 506, 34 of IPC and SC & ST Act with the averments that she belongs to Majbi Sikh Caste. The complainant had taken 3 bighas 15 biswas of land on lease for four years at village Kheri Chehlan from Rukmani Devi, widow of R.P Sharma, resident of Kheri Chehlan and in this regard, lease deed was executed between the complainant and Rukmani Devi. Rukmani Devi has expired, but accused Pawan Singh and Labh Singh were interfering in the possession of complainant over leased land, due to which complainant had filed a suit for permanent injunction.

8. The applicant has further averred that on 15.07.2008, she was present on the leased land and all the respondents with common and bad intention, came there. Respondent No.3 Kuldeep Singh raised lalkara to teach a lesson to complainant regarding filing of suit against them and then Labh Singh/respondent No.1 caught hold of the complainant by the hair and Pawan Kumar/respondent No.2 caught hold of her from the arms and respondent No.3 Kuldeep Singh gave slaps on the mouth of the complainant and also gave abuses by caste to the complainant. The complainant raised hue and cry and on hearing her hue and cry, Karam Singh, Baldev Singh, Gurpreet Singh came there and rescued the complainant from the clutches of the respondents. Thereafter, the respondents ran away from the spot after giving threats to kill her. The matter was reported to the police, but no action was taken. Hence this complaint.

9. The learned trial Court, upon preliminary evidence led by the applicant, found that a prima facie case was made against the respondents and accordingly charged them under Sections 323, 354 read with Section 34 IPC, to which the accused-respondents pleaded not guilty and claimed trial. As noticed above, case of the applicant is that she had taken land on lease from one Rukmani Devi and that the respondents were interfering in her possession over the leased land. It has been stated that in respect of the same, even a lease deed was executed and a Civil Suit was pending between the parties. On the date of incident, i.e., 15.07.2008, when the applicant was present on the spot on the leased land, it has been alleged that the accused/respondents came and beat her up and when she raised hue and cry, then the eyewitnesses Karam Singh, Baldev Singh and Gupreet Singh came and rescued her, upon which the respondents ran away.

10. Perusal of the record shows that although, it is claimed by the applicant that she had leased the land in question from Rukmani Devi, however, a finding of fact has been returned by the learned trial Court that the said land is in the possession of the accused/respondents. Moreover, at the time of arguments, learned counsel for the applicant has submitted that although the land was taken on lease by the applicant, no lease deed was executed in respect of the same. The said argument is evidently contrary to the pleadings on record.

11. It has further been alleged by the applicant that eyewitnesses Karam Singh, Baldev Singh and Gurpreet Singh had come on the spot where the accused/respondents were beating her. However,

admittedly, the said eyewitnesses Karam Singh and Baldev Singh have not been examined by the applicant before the learned trial Court. The only alleged eyewitness examined by the applicant was Gurpreet Singh (CW2), who is son of the applicant. I am in agreement with the reasoning of the learned trial Court that testimony of CW2/Gurpreet Singh cannot be relied upon as he is an interested witness being son of the applicant. Furthermore, there is no explanation forthcoming as to why the other eyewitnesses were not examined by the applicant.

12. It has also been alleged that the applicant was beaten up by the accused/respondents. However, no medical record has been placed on record by the applicant either before the learned trial Court or before this Court to show any injuries suffered by her.

13. Relevant findings of the learned trial Court in respect of all the above said three allegations/contentions made on behalf of the applicant, are as under:-

“13. Having considered the arguments of Ld. counsel for the parties in the light of evidence and other facts brought on record, I find myself in agreement with submissions of Id. defence counsel and complainant has miserably failed to prove her allegations as made in the present complaint against the accused. The complainant has alleged that the accused have beaten the complainant on the land taken on lease by her. However, complainant has not brought anything on record to show that she has taken the land on lease from Rukmani Devi. She has placed on record the copy of agreement as Mark-A, but the same has not been proved as per Indian Evidence Act. Therefore, the document which has not been proved as per law

shall not be read in evidence. Further complainant has alleged that the incident took place at village KheriChehlan, but the land taken on lease by complainant is at Sherpur. This casts a doubt on the version of complainant.

14. The complainant has alleged that Karam Singh, Baldev Singh and Gurpreet Singh came on the spot when accused were beating her. Complainant has failed to examine Karam Singh and Baldev Singh, both the independent witnesses in her after charge evidence to corroborate her version. Complainant has got examined Gurpreet Singh as CW-2, but he is an interested witness as he is the son of the complainant. During his examination, he deposed that his mother took the land on mortgage from Rukmani Devi and later Rukmani Devi agreed to register the sale deed in favour of his mother, but she did not execute the same as she was not well and then after her death, his mother became owner. However, during his cross-examination, he stated that he does not know whether Labh Singh is in possession of the said land which has been taken on lease by his mother. He even does not know whether the khasra girdawari shows that Labh Singh is in possession of alleged property. Accused in their defence have produced khara girdawari for the year 2011 as Ex.D6, wherein father of accused has been shown to be in possession of the alleged land stated to have taken by complainant on lease. This falsifies the case of the complainant that she was in possession of the land where the alleged incident took place.

15. Further the complainant has failed to examine any doctor to prove the injuries sustained by her at the hands of accused. During her cross-examination, she admitted that she had got medically examined at hospital. But she did not examine any doctor to prove injuries sustained by her on her person at the hands of the accused persons. This further casts adoubt on the version of complainant.”

14. Ld. Counsel for the applicant is unable to dispute the above said findings of the learned trial court. Nothing whatsoever has been produced before this Court to controvert the said findings.
15. In view of the above, I find no ground is made out to interfere in the impugned judgment dated 25.10.2013. Present application accordingly stands **dismissed**.
16. Pending application(s) if any also stand(s) disposed of.

02.04.2024

Sunena

Whether speaking/reasoned

Whether reportable

(Nidhi Gupta)

Judge

Yes/No

Yes/No