

(2014) 07 P&H CK 0763

High Court Of Punjab And Haryana At Chandigarh**Case No:** CRM-A-773-MA-2013 (O&M)

Mohd. Ikrar Imam

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: July 14, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 317, 378, 482
- Penal Code, 1860 (IPC) - Section 148, 149, 297, 427, 452

Hon'ble Judges: R.P. Nagrath, J**Bench:** Single Bench**Advocate:** Parminder Singh, Advocate for the Appellant**Final Decision:** Dismissed

Judgement

R.P. Nagrath, J.

CRM-41101-2013

1. Against the judgment of acquittal dated 6.8.2011, passed by the Judicial Magistrate Ist Class, Ambala in the complaint case titled "Mohd. Ikrar Imam Vs. Prem Chand and others", appeal was filed before the Sessions Court. Learned Additional Sessions Judge, Ambala before whom the appeal was pending disposed of the appeal vide order dated 16.7.2013 on the statement of the appellant that appeal against acquittal in a complaint is maintainable in the High Court, that appeal was withdrawn with liberty to file the appeal before this Court. It has thus, occasioned the delay of 670 days in filing the appeal before this Court.

2. It has been held by this Court in [M/s. Tata Steel Ltd. Vs. M/s. Atma Tube Products Ltd. and Others](#), that appeal against the judgment of acquittal in a complaint case lies before this Court. Therefore, the instant application is allowed and delay of 670 days in filing the instant appeal is condoned.

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3. Prayer is made by the appellant for grant of Special Leave to Appeal in terms of sub-section 4 of Section 378 Cr.P.C. against the judgment of acquittal dated 6.8.2011 passed by Judicial Magistrate Ist Class, Ambala in complaint titled "Mohd. Ikrar Imam Vs. Prem Chand and others". The Magistrate, issued the process against the accused-respondents No. 2 to 9 for offences under Sections 148/297/427/452/506 read with Section 149 IPC after rendering preliminary evidence. The accused persons put in appearance and the complainant-appellant produced evidence before charge. On the basis of pre-charge evidence, the trial Court framed charges against the accused for the aforesaid offences. The trial was concluded. Respondents Nos. 2 to 9 were also examined u/s 313 Cr.P.C. and they also produced defence evidence. Learned trial Court acquitted them after a detailed discussion of the evidence produced before it holding that the charges are not proved beyond doubt.

4. After hearing learned counsel for the appellant-complainant and on perusal of the trial Court's judgment, I do not see any merit in the prayer to grant Special Leave to Appeal against the judgment of acquittal.

5. The dispute was pertaining to delivery of possession of the land of Mosque (Masjid) which was stated to be occupied by respondent No. 2-Prem Chand who also raised construction on a portion of that land. The matter was settled and respondent No. 2 executed a writing dated 22.5.1996 promising to hand back the possession but he did not abide by the said undertaking. It is stated that on 23.3.1998, the accused persons armed with lathis and weapons entered inside the Idgah and threatened the complainant-appellant to be killed. They demolished the Masjid and cut the poplar trees standing on the land apart from damaging some other property of the Mosque.

6. The version of the complainant during the trial was relating to incidents of two dates i.e. 14.3.1998 and 23.3.1998. On 14.3.1998, the accused persons are stated to have demolished the Mosque and on 23.3.1998, they entered the Mosque in the night and threatened the complainant to be killed. They also damage the electricity meter and wires etc.

7. There are three eye-witnesses examined by the complainant-appellant to support his contention. They are PW-2-Gurnam Singh, PW-6 the complainant-appellant himself and PW-7 Sabar Ali.

8. It would be relevant to observe that a civil litigation was admittedly pending between the parties in which the complainant-appellant had lost up to the Appellate Court in his suit for injunction and possession over the disputed property. There is no response to the aforesaid observations of the lower Court in the grounds of appeal nor copies of the Civil Court judgments have been placed on record of the appeal in order to challenge this statement of fact.

9. Moreover, the appellant-complainant has examined only three witnesses to testify about the incident that took place on two dates. A lot of hue and cry was raised that the construction of Mosque was damaged and that the accused party caused destruction of property of Mosque. It was also stated that electricity wires and the electric meter were damaged and few trees were also cut. The complainant could bring some support to this averment by taking photographs of the damaged building and that of the cut trees which were allegedly removed. In the absence of this important evidence it was not possible to attach any weight to oral evidence on this allegation.

10. It would be relevant to refer to the circumstances on which the learned trial Court found the eye-witnesses as highly interested.

11. With regard to Gurnam Singh PW-2, it has been found that the accused persons filed a complaint against Gurnam Singh that he got old age pension fixed wrongly and on this complaint the pension to Gurnam Singh was stopped and excess amount was recovered by the Government. This fact came in the cross-examination of Gurnam Singh PW-2. He also admitted that he contested the Panchayat Elections against Surinder Mohan-respondent No. 4 and suffered defeat.

12. The learned trial Court in para 11 of the judgment observed as under:-

11. It is pertinent to mention that all the documents placed by the complainant qua his possession pertains to the year 2005 onwards including the electric meter, residence certificate, entry in the khasra girdawari and ration-card. But the alleged incident took place in the year 1998. For an offence u/s 452 of IPC, it was important for the complainant to prove that the accused entered his house/place of worship etc. But in the case in hand, no such evidence has been produced by the complainant to show that he was residing in the property or that there existed a Masjid/Idgah which was in his possession. The complainant has asserted that the Idgah/Masjid belongs to the Walk Board. But no such document has been placed on record by the complainant to show that he has been appointed as Imam by the Wakf Board in the concerned village and is residing in the alleged Idgah/Masjid. Document Ex. CW9/A which is an extract from the Dak Book of the Wakf board regarding the minutes of the meeting held also does not support the case of the complainant. The entire documents relied upon i.e. complaints written by the Punjab Wakf Board to the police officials which are on record as Ex. CW 5/A, mark A, Ex. PW5/B etc. is through executive officer of the wakf board and it also nowhere mentions that the complainant has been appointed the Imam or was residing in the mosque. Then, the version of the complainant as a witness is highly improvised(?) In this initial complaint/pre-charge evidence he has not implicated police and revenue officials but in after-charge evidence, he made additions in his evidence which do not find support from any other witness. On the other hand, the learned defence counsel has placed on record copy of khasra girdawari from the year 1999 to 2005 as Ex. DX/11 and Ex. DX/12 which reflects that only a burial place exists in Khasra No.

98 which is allegedly disputed.

13. This is not a case where the complainant or his witnesses were inflicted any injury. In the absence of any such physical assault when about 8 persons are stated to have formed a group to take forcible possession of the disputed land, there was supposed to be some resistance resulting into a scuffle and consequent injuries. In paragraph No. 4 of the grounds of appeal it is stated that appellant was given beatings by the accused but there is nothing to suggest that he was got medically examined.

14. In view of the above, I find absolutely no remote possibility of success of the appeal and thus, the prayer for grant of Special Leave to Appeal is declined.

15. Dismissed.

16. Since the version on merits has been disbelieved by the trial Court there would be no use keeping the matter in suspense against Mangat Ram co-accused the trial against whom was ordered to be separated in terms of Section 317 Cr.P.C. and the proceedings against him were adjourned sine die due to his illness. In the fact and circumstances of the case the criminal proceedings against Mangat Ram co-accused are also quashed in exercise of inherent powers u/s 482 Cr.P.C.