

In the High Court of Punjab and Haryana at Chandigarh

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(1) Criminal Misc. No.A-1202-MA of 2010

.....

Date of decision:7.12.2015

State of Punjab

...Applicant

v.

Kuldip Khanna

...Respondent

....

Criminal Misc. No.4828 of 2011 and
(2) Criminal Misc. No.A-125-MA of 2011

.....

Naresh Kumar

...Applicant

v.

Kuldip Khanna and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Ms. Simsi Dhir Malhotra, Deputy Advocate General, Punjab for
the applicant-State in Cr. Misc. No.A-1202-MA of 2010 and
for respondent No.2-State in Cr. Misc. No.M-125-MA of 2011.

None for respondent No.1 in both the applications.

Mr. Vishal Rattan Lamba, Advocate for Mr. Daldeep Singh,
Advocate for the applicant in Cr. Misc. No.A-125-MA of 2011.

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Inderjit Singh, J.

Cr. Misc. No.4828 of 2011 in
Cr. Misc. No.A-125-MA of 2011:

For the reasons mentioned in the criminal miscellaneous
application, the delay of 45 days in filing the application/appeal is
condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-1202-M A of 2010 &
Cr. Misc. No.A-125-MA of 2011:

This order will dispose of the above mentioned two criminal miscellaneous applications filed under Section 378(3) and 378(4) Cr.P.C., as these arise out of the same judgment, i.e. one application filed by the State of Punjab and the other filed by complainant-Naresh Kumar seeking grant of leave to file appeal against the impugned judgment of acquittal dated 3.8.2010 passed by learned Sessions Judge, Rupnagar, vide which the accused Kuldip Khanna-respondent No.1 has been acquitted.

It is mainly stated in the application i.e. Criminal Misc. No.A-1202 of 2010 that the impugned judgment of the learned trial Court is against law and facts and the same is not sustainable in the eyes of law. The learned trial Court has acquitted the accused without any cogent and convincing reasons. The State of Punjab is filing accompanying appeal against the acquittal of the accused. The judgment of the learned trial Court has caused a grave miscarriage of justice. It has been prayed that this application may be allowed and permission may be granted to file an appeal against the acquittal.

The other application i.e. Criminal Misc. No.A-125-MA of 2011 has been filed by complainant-Naresh Kumar against Kuldip Khanna and State of Punjab, which is taken up for hearing along with Cr. Misc. No.A-1202-MA of 2010.

Notice of motion was issued in Cr. Misc. No.A-1202-MA of

2010.

No one has put in appearance on behalf of respondent-Kuldip Khanna.

Criminal Misc. No.A-125-MA of 2011 was ordered to be heard along with Cr. Misc. No.A-1202-MA of 2010.

I have heard learned counsel for the State and leaned counsel for the complainant and have gone through the record.

The brief facts of the case are that Naresh Kumar-complainant along with shadow witness Surjit Singh came to the office of Vigilance Bureau where they met DSP. Complainant got his statement recorded as he is running a 'Karyana' shop in Village Chhat and was to get the loan limit of ₹50,000/- enhanced to ₹1,25,000/- from Patiala Cooperative Bank, Zirakpur, District Patiala (now District S.A.S. Nagar). Application was filed one month prior to 20.9.2004 and the file was sent to Head Office, Patiala by the Branch Office at Zirakpur. Kuldip Khanna, Field Officer of the Bank was to submit the report after inspecting the shop of the complainant. The complainant met accused many times for requesting him to submit report after inspecting the shop, but he went on putting off the matter on one pretext or the other. The complainant met the accused for requesting him to inspect the shop, but the accused insisted for ₹5,000/- illegal gratification. The matter was settled for ₹4,000/- and the complainant promised to pay the amount on some other occasion being not in possession of that amount. The accused claimed as if he is to go outside for two/four days and as such, the complainant should met him on 20.9.2004 at 5.00 p.m. in front of Mayur

Restaurant, Zirakpur with the bribe money of ₹4,000/-. The complainant disclosed about all this to shadow witness Surjit Singh, who prevented the complainant from paying the bribe, but called upon him to get the corrupt trapped through the Vigilance Bureau. Thereafter, the complainant along with Surjit Singh came to the office of Vigilance Bureau along with currency notes of ₹4,000/-. After recording statement of the complainant, endorsement was made and then 'Ruqa' was sent for registration of the FIR. Currency notes of ₹4,000/- numbering eight in the denomination of ₹500/- each were presented by the complainant before the Vigilance Bureau. Phenolphthalein powder was applied and demonstration was shown. A raid party was constituted including Major Singh, Assistant Executive Engineer and Prem Chand, UDC in the office of SDO, PSEB, Dera Bassi. The complainant and the shadow witness went to the accused in front of the Mayur Restaurant, Zirakpur. On receiving signal, the Police party raided and recovered the currency notes. The hands of the accused were washed etc. After necessary investigation, challan was presented in the Court.

On presentation of challan, the trial Court finding *prima facie* case against the accused, framed charges for the offences under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act'), to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Major Singh, SDO (official witness); PW-2 Naresh Kumar-complainant, PW-3 Surjit Singh-shadow witness, PW-4 Nachhattar Singh, Manager, who proved order of loan sanction Ex.PW.4/A bearing signatures of the accused

as well as forwarding letter Ex.PW.4/B. PW-5 DSP Zora Singh is the Investigating Officer of this case, who deposed regarding investigation conducted by him. PW-6 Prem Kumar, Superintendent, who brought record of PW.6/A to Ex.PW.6.F and claimed as if the sanction order Ex.PW.6/G for prosecution of accused. PW-7 C-II Harpal Singh is a formal witness. PW-8 HC Balbir Singh is Moharrir of Malkhana.

After close of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. and was confronted with the evidence of the prosecution, but he denied the correctness of the evidence and pleaded himself as innocent. He pleaded his false implication. He claimed that he never demanded any bribe money from the complainant and nor accepted the same. No defence witness was examined in support of his case.

The learned Sessions Judge, Rupnagar after appreciating the evidence acquitted the accused.

After hearing the learned counsel for the State as also the counsel for the complainant and after going through the lower Court record and the judgment passed by the learned Sessions Judge, Rupnagar, I find that nothing has been pointed out which material evidence has not been considered by the Court below. Nothing has been pointed out as to how the findings given by the trial Court are perverse or against the law.

In the present case in hand, the shadow witness Surjit Singh has turned hostile and has not supported the prosecution version neither in the examination-in-chief nor in the cross-examination. He was confronted with

his statement, but he stated that he had not given said statement to the Police. Therefore, in the present case, the shadow witness has not supported the prosecution version. It is for the prosecution to prove the demand and acceptance of the bribe money. To prove this PW-2 Naresh Kumar appeared as witness and deposed in examination-in-chief as per the prosecution case. When he was cross-examined and confronted with his statements Ex.PH and Ex.DA where this fact was not mentioned that in his presence the accused agreed to get ₹4,000/- in order to get the case cleared. He further stated in cross-examination that he did not remember the time when he came to his shop on 16.9.2004. On 16.9.2004, he did not visit the office/Bank of the accused. He also stated that he did not state to the Police in his statement that on 16.9.2004, he went to the Patiala Cooperative Bank, Zirakpur, where he met Kuldip Khanna, Field Officer and requested him to report about the shop and that he demanded ₹5,000/- for inspection of the shop. The attention of the witness was drawn to his statement Ex.PH, portion A to A, where it was so recorded. The witness stated that he did not make such a statement to the Police. In cross-examination, this witness further stated that he had gone to the Bank two-three days earlier. He also stated that he handed over ₹4,000/- to the DSP. He took the accused to Mayur Hotel. He further stated that the Police completed the proceedings inside Mayur Hotel. He also stated that the person of the accused was not searched in his presence. In cross-examination, this witness further stated that he did not hand over any money to the accused. He also stated that Surjit Singh PW was not with him. He also stated that he remained sitting outside. He also

stated that the hands of the accused were not washed in his presence. The complainant in cross-examination also stated that the Police obtained his signatures on the proceedings in the office. The Police obtained his signatures on all these documents in the office of Vigilance Bureau at Chandigarh. When he signed Ex.PB in the office of Vigilance Bureau at Chandigarh, at that time, he and Surjit Singh signed Exs.PB, PC, PD and PE and there was no other witness present. They alone signed these documents. He also stated that pant was not washed or dipped in his presence as many persons had collected there. He further stated in cross-examination that he had gone with the Police party to the office of the accused and also to the house of the accused in Sector 4, Panchkula. This cross-examination conducted on 14.5.2008 on the statement of the complainant totally demolished the case of the prosecution. Then as argued on the basis of application this witness was again called for re-examination. Again the witness was examined second time and also cross-examined second time. This time the witness admitted that his signatures were obtained under his cross-examination after recording of cross-examination by the Court. He admitted that he appeared in the Court at Mohali after receipt of summons from the Court. His statement was recorded on oath. He stated in the cross-examination that when he was re-examined he did not remember that he was confronted with the statements Exs.PH and DA regarding ₹4,000/-. He next stated that he could not understand the question and as such he cannot say that he suffered statement in cross-examination that he went to Patiala Cooperative Bank, Zirakpur, where he met Kuldip Khanna and requested

him about the report of the shop and he demanded ₹5,000/- and this reply was given by him after confronting with portion A to A.1 of Ex.PH.

Keeping in view the facts and circumstances of the present case, I find that the only witness to prove the demand and acceptance of the bribe money is complainant PW-2 Naresh Kumar. He is saying one thing at one time, another thing at another time and when he was again re-examined he again saying another thing. Such type of witnesses cannot be relied upon. The learned Sessions Judge has correctly held that the accused cannot be convicted on the statement of the complainant who has given various versions. The State counsel as well as learned counsel for the complainant stated that the complainant could not understand the question on the first day when he was cross-examined. This is no ground for re-examination of the witness. The Court has correctly taken note of the examination-in-chief and cross-examination recorded of the witness on the earlier date and also when he was re-examined. As the complainant has given different versions in the examination-in chief and cross-examination at first stage and then again another version while re-examination. Therefore, a reasonable doubt exists in the present case specially when the shadow witness has not supported the prosecution version.

Therefore, in the facts and circumstances of the present case, I do not find any ground to grant special leave to file appeal to the present applicants.

The reasoning given by the learned trial Court, in no way, can be held as perverse or against the evidence or against the law. Therefore,

from the above, I do not find any ground to grant leave to file appeal.
Hence, finding no merit in the criminal miscellaneous applications filed under Section 378(3) and 378 (4) Cr.P.C. seeking leave to file appeal, the same are dismissed.

December 7, 2015.

(Inderjit Singh)
Judge

hsp