

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.24756 of 2012
and
Criminal Misc. No.A-267-MA of 2012

.....

Date of decision:8.9.2015

State of Haryana

...Applicant

v.

Rajesh Kumar

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Anmol Malik, Assistant Advocate General, Haryana for the applicant.

Mr. Dilpreet Singh, Advocate for Mr. Gautam Dutt, Advocate for the respondent.

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Inderjit Singh, J.

Cr. Misc. No.24756 of 2012:

Notice of the application for condonation of delay was issued to the respondent. Mr. Dilpreet Singh, Advocate has appeared on behalf of the respondent. For the reasons mentioned in the criminal miscellaneous application, the delay of 344 days in filing the criminal miscellaneous application for grant of leave to appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-267-MA of 2012:

Learned counsel for the parties prayed that the application for

grant of leave to file appeal may be taken up hearing today itself.

The State/applicant has filed this criminal miscellaneous application under Section 378(3) Cr.P.C. against Rajesh Kumar-respondent/accused for grant of leave to appeal against the judgment of acquittal dated 6.1.2011 passed by learned Special Judge, Nuh.

It is mainly stated in the application that the State of Haryana is filing the accompanying appeal against the judgment of acquittal, which is likely to succeed. The judgment of acquittal of the accused/respondent for the offences under Sections 7 and 13 of the Prevention of Corruption Act (hereinafter referred to as 'the Act') has caused grave miscarriage of justice. The State Government has accorded sanction for filing the present appeal, hence this application. It is prayed that the application may be allowed and the leave to appeal may kindly be granted as contemplated under Section 378(3) Cr.P.C.

Notice of motion was issued. Mr. Dilpreet Singh, Advocate has appeared and accepted notice on behalf of the respondent.

I have heard learned counsel for the parties and have gone through the record.

The brief facts of the case are that on 30.9.2007, Satya DSP, State Vigilance Bureau, Gurgaon was present at her house and received a telephonic call from Vikram Singh, Head Clerk, SVB, Gurgaon that Dr. Rajesh, Government Hospital, Tauru, was demanding ₹2,500/- as illegal gratification from Noordin son of Subhan Khan. She reached her office and as Dr. Rajesh was a Gazetted Officer, therefore, she took permission from

higher authorities including Shri Navraj Sandhu, Commissioner-cum-Secretary, Department of Health, Government of Haryana, Chandigarh, for raid. She joined Inspector Ram Phal, ASI Santosh Kumar, ASI Surender Singh etc. and formed a raiding party and reached Mohammadpur 'T' Point, Tauru, where Noordin-complainant along with his cousin Khurshid met her and presented an application before her. She made an endorsement on the application and sent the same to SHO, SVB, Gurgaon, on the basis of which FIR was registered for the offences under Sections 7 and 13(i)(d) of the Act.

In the complaint, Noordin stated that on 27.9.2007, a fight took place between them on one side and Sahabuddin etc. on the other side regarding a motorcycle parked on road side. In the fight, Noordin and his wife Mubina suffered injuries. Two persons from the other side also suffered injuries. They reported matter at P.P. Khor. The other party reported the matter in Police before them. Therefore, the Police at Police Post, Khor. refused to record their report. He with his wife Mubina visited Police Station, Tauru for necessary action, where he was asked to get them treated in hospital and necessary action shall be taken. Complainant-Noordin along with his wife Mubina went to Government Hospital, Tauru, where they were medico-legally examined by Dr. Rajesh Jindal. He sent them to Government Hospital, Nuh for X-ray and asked them to meet him later on. On 29.9.2007, the complainant along with his cousin Khurshid met Dr. Rajesh Jindal in Government Hospital, Tauru, who told them that other party had suffered more injuries and if they wanted their case should

be equivalent to the opposite party, they will have to pay ₹2,500/- as illegal gratification and if a sum of ₹2,500/- is not given to him, they will be involved in a case for the offence under Section 307 IPC.

On the basis of these facts, a raid was conducted. The doctor was apprehended and five currency notes of the denomination of ₹500/- each total amounting to ₹2,500/- were recovered from the right hand of Dr. Rajesh. After necessary investigation, challan was presented in the Court.

On finding prima facie case against the accused, the trial Court framed charges against the accused for the offences under Sections 7 and 13 (i)(d) of the Act, to which the accused pleaded not guilty and claimed trial. The prosecution in order to prove its case produced its evidence. On completion of the evidence of the prosecution, statement of the accused under Section 313 Cr.P.C. was recorded.

On the basis of evidence, the learned Special Judge, Nuh, vide impugned judgment dated 6.1.2011 acquitted the accused/respondent. Aggrieved against this judgment, the present application seeking leave to appeal has been filed by the State of Haryana.

From the record, I find that the complainant as well as the shadow witness i.e. PW-2 Noordin and PW-3 Khurshid have not supported the prosecution version. They have turned hostile. PW-2 Noordin stated that he never paid illegal gratification. The learned Special Judge, Nuh held that neither demand nor acceptance of illegal gratification have been proved by the prosecution. Therefore, the accused was acquitted.

A perusal of the findings shows that these are as per evidence.

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In no way, it can be held that these findings are perverse or against the evidence. When the complainant and shadow witness have not supported the prosecution version, therefore, demand as well as the acceptance of illegal gratification are not proved. Even if it is taken that recovery has been proved by the prosecution that is not sufficient for the conviction of the respondent/accused.

Therefore, from the above discussion, I find that the impugned judgment dated 6.1.2011 passed by the learned Special Judge, Nuh, is correct, as per evidence and law.

Consequently, finding no merit in the application filed under Section 378(3) Cr.P.C. by the State of Haryana, the same is dismissed.

September 8, 2015.

(Inderjit Singh)
Judge

hsp