

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A-535-MA-2013 (O&M)

Date of decision : 07.12.2015

Mahender Parkash Sharma

...Applicant

Versus

Dilsher Singh @ Balwal Cheahal

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Sandeep Goyal, Advocate for the applicant.

Mr. Raj Kapoor Malik, Advocate for the respondent.

JITENDRA CHAUHAN, J.

The applicant seeks leave to appeal against the impugned judgment dated 21.03.2013, passed by the Chief Judicial Magistrate, Kaithal, thereby, acquitting the accused-respondent in complaint case No.115/954 of 2012 dated 13.06.2006/13.10.2007, under Sections 406, 420, 323, 506 of the Indian Penal Code (for short, 'the IPC).

Brief facts of the case, as noticed in the opening para of the impugned judgment, are reproduced as under:-

“2. Present complaint has been filed by Mahender Parkash on the ground that he was employed on 12.06.1997 by the accused at Azad Hind Oil Company situated at Pili Road, Pundri as Salesman-cum-Accountant

and was deputed for bringing the kerosene oil tanker from Hindustan Petroleum Corporation Limited Ambala Cantt. The complainant was also required to distribute kerosene oil at the depots of various villages. Complainant was instructed to be available at 24 hours service at short notice of half hour by the accused because the kerosene oil tanker used to be brought at night. The duty of complainant was very hard. Accused promised a salary of Rs.5,000/- per month to the complainant for the year 1997 and further increments as per the satisfaction of work done by the complainant. Accused with malafide intention under the pretext that the family of the complainant was small and living in village Bandrana, projected that he would be given normal expenditure and rest of the amount would be deposited in his account in the company and he would be paid 18% interest. Complainant could not understand the malafide intention of accused and agreed to it. Accused also promised to give all the amount with interest at the time of marriage of the daughter of the complainant. Complainant worked hard and earned a huge profit for the accused. Accused kept depositing the amount in the name of complainant, details of which are given in the

complainant and total sum of Rs,3,92,500/- was accumulated. When the amount became huge, accused made a plan to remove the complainant from the service. Accused had a diesel pump at village Kithana, in the name of his sister. The accused instructed the complainant to bring the kerosene oil tanker from Ambala Cantt and mix it into the diesel at Chahal Filling Station, but the complainant refused to do so. Accused forced the complainant to do illegal work and finally complainant left the service of accused on 10.09.2004. Complainant asked the accused for his money but accused delayed the payment on the one pretext or the other. It was also mentioned that accused was running two buses on one single permit and a criminal case was also registered against the accused. Accused did not pay the hard earned money of complainant. A complaint was made by the complainant to the then C.T.M. Kaithal and the C.T.M. raided the petrol pump on 23.06.2005 and sealed it because many irregularities were found. Accused with malafide intention and to defraud the Oriental Bank of Commerce, Pundri used to give wrong stock statement in the manner that he used to have only 400/500 litres in the stock at the last of

the month but used to show 50,000/60,000 litres reserve. On this pretext, the accused used to withdraw huge amount from the bank. Complainant also brought to the notice of Bank by a letter dated 10.03.2006 and he also informed the Director Food and Supply at Chandigarh mentioning the act and conduct of the accused. On this, inquiry was conducted on 26.05.2006. Accused being angry called the complainant on 02.06.2006 at Chahal Bus Service at 6.00 p.m. for payment of the salary with interest. Complainant reached there at 6.00 p.m. of 02.06.2006. There the accused threatened the complainant to not to demand any money, otherwise, he would be killed. Complainant was also beaten up by the accused as well as the gundas called by him and no money was paid to him. The complainant was threatened to be killed by the accused who brandered a revolver on him. Thus he prayed that action be taken against the accused.”

In the preliminary evidence, the complainant Mahender Parkash got examined himself as PW-1 and closed the evidence after tendering documents Ex.C1 to Ex.C8 respectively.

The accused was summoned to face trial for the

commission of offence punishable under Section 323, 406, 506 of the Indian Penal Code vide order dated 13.02.2007. Upon notice, the accused put in appearance and was enlarged on bail vide order dated 21.04.2007.

In the pre-charge evidence, the complainant got examined Tilak Raj as CW-1; Ram Kumar as CW-2; Bijender Singh as CW-3; S.S. Narwal as CW-4 and complainant Mahender got examined himself as CW-5 and closed the same on 16.09.2011 after tendering certain documents.

Accused was charged for commission of offence under Sections 406, 323, 506 IPC to which he pleaded not guilty and claimed trial. No after charge evidence was led by the complainant.

In his statement recorded under Section 313 Cr.P.C., the accused denied all the allegations levelled against him and pleaded false implication. However, he did not lead any evidence in defence.

The learned trial Court, after hearing learned counsel for the parties and perusing the evidence on record, acquitted the accused-respondent of the charge framed against him.

Hence, the present application for leave to file appeal against the impugned judgment of acquittal.

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

The allegations against the accused in the present case are that the complainant was employed on 12.06.1997 as Salesman-cum-accountant with the Azad Hind Oil Company by the accused. The salary was fixed at Rs.5,000/- per month. The accused, with a malafide intention, allured the complainant to deposit some amount of his salary in the account of the complainant with the company under the pretext that the same shall be repaid to him along with interest @ 18% per annum at the time of his daughter's marriage. In order to prove this allegation, the complainant was required to prove that the accused had any concern with M/s Azad Hind Oil Company in the year 1997. However, except for the oral testimony of the complainant, there is nothing on record to prove this fact. In this regard, the complainant examined CW-1, Tilak Raj, who placed on file indents Ex.C1/1 to C1/303, which bear the signatures of Bakhtawar Singh and accused Dilsher Singh had signed these indents only after he became partner in the firm, in the year 2004. Even, the complainant has admitted in his cross-examination that initially, Bakhtawar Singh was the proprietor of M/s Azad Hind Oil Company and the present accused became partner on 31.03.2004. The complainant has not examined any witness to prove that the accused was dealing with the firm from the year 1997 till 2004 or had put his signatures on any document relating to the firm. Moreso, there is nothing on record to prove that the complainant was

employed with the firm on the monthly salary of Rs.5,000/-. No record of the firm was either summoned or produced regarding deposit of the amount with the firm.

The complainant, while appearing as CW-5, stated that on 27.11.2003, the marriage of his daughter was solemnized and accused Dilsher Singh had given him Rs.50,000/-. The accused also assured the complainant to pay back the remaining amount within two to three months. The complainant left the job on 10.09.2004 and no explanation has come forth for filing the present complaint after a delay of two years, although, he kept on filing complaints against the accused with regard to the irregularities committed by him before the concerned authorities.

As regards the alleged incident of 02.06.2006, the complainant examined CW-2 Raj Kumar, who deposed that on 02.06.2006, he was waiting for the bus at Chhotu Ram Chowk for going to Kurukshetra, when he heard noise from Chahal Bus Service. When he went there, he saw accused Dilsher and 3-4 other persons beating the complainant. The witness rescued the complainant. However, there is no mention of this witness in the complaint moved by the complainant. CW-2 Raj Kumar has nowhere stated that accused was having revolver with him as alleged in the complaint. Therefore, the testimony of CW-2 Raj Kumar is not reliable.

In view of the above, this Court feels that the impugned judgment of acquittal recorded by the learned trial Court does not suffer from any illegality or perversity. The complainant/prosecution has failed to prove its case against the accused-respondent beyond a shadow of reasonable doubt. In *Vijay Bhai Vs. Navnit Bhai, 2004 AIR SCW 41133*, it has been held that the Court would be slow in reversing the finding of acquittal unless there is perverse and erroneous appreciation of evidence.

In view of the above, the present application is dismissed.

Leave declined.

07.12.2015
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(JITENDRA CHAUHAN)
JUDGE

Note : Whether to be referred to the Reporter ? : Yes / No