

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.A-117-MA of 2014

.....

Date of decision:18.11.2015

Suresh Kumar

...Applicant

v.

State of Punjab and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Baljinder Singh Sra, Advocate for the applicant.

.....

Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against State of Punjab, Balwinder Singh, SHO and Sukhbir Singh, ASI-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 1.11.2013 passed by learned Additional Sessions Judge, Ludhiana, vide which the complaint filed by the complainant has been dismissed.

It is submitted in the application that the applicant is filing the accompanying criminal appeal against the judgment of acquittal which is likely to succeed. The applicant is the complainant and despite the cogent and unflinching evidence on the record, the learned trial Court erred in acquitting respondents No.2 and 3-accused.

I have heard learned counsel for the applicant and have gone

through the record specially the judgment dated 1.11.2013 passed by the learned Additional Sessions Judge, Ludhiana.

As per the version of the prosecution on 23.1.2005 at about 7.00 p.m., Ramesh Kumar was present at his grocery shop when all the accused except ASI Sukhbir Singh, in prosecution of their criminal conspiracy, raided the grocery shop of Ramesh Kumar and took away ₹28,000/- from the 'Galla', one mobile phone set Nokia 1100 and some grocery goods. They also arrested Ramesh Kumar and, at the same time, the village panchayat and complainant-Suresh Kumar intervened and protested for illegal arrest and detention of Ramesh Kumar. But, the SHO replied that Ramesh Kumar will soon be let off after interrogation. Ramesh Kumar was taken to Police Station Machhiwara. On the same night, Ramesh Kumar was shifted to Police Post Sherpur Bet and on 24.1.2005, ASI Sukhbir Singh falsely implicated Ramesh Kumar in case FIR No.13 dated 24.1.2005 for the offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act') at Police Station Machhiwara after planting false recovery of 10 Kgs. poppy husk. As a matter of fact, Ramesh Kumar was removed to police station from his grocery shop on 23.1.2005 as he had refused to part with grocery items on credit to Jarnail Singh C-II. Ramesh Kumar filed applications to S.S.P., Khanna and other higher authorities against his false implication in the NDPS case. An inquiry was conducted by Shri Dilbagh Singh, S.P. (D), Khanna and the village panchayat of Village Chakli Adil and Shehbazpur appeared before him and apprised him of the true facts. Both SI Balwinder

Singh and ASI Sukhbir Singh along with other accused Policemen were threatening Ramesh Kumar to withdraw his complainant otherwise, he would have to face serious consequences and he will be involved in some other false case. As such, Ramesh Kumar started remaining under continuous depression and mental torture. Ramesh Kumar also felt ashamed and dejected on account of his false involvement in NDPS case. Ramesh Kumar also used to talk to end his life on account of above said police harassment. On 7.5.2005, in the morning at Village Chakli Adil, Ramesh Kumar consumed celphos at his grocery shop and thereafter, he came to his residence at Village Shehbazpur and the complainant removed Ramesh Kumar in serious condition to Gurlabh Hospital, Machhiwara. In the way, Ramesh Kumar made dying declaration to the effect that he has consumed celphos under the threat, pressure and abetment of above mentioned police officials. However, the doctors at Machhiwara advised the complainant to take the patient to CMC, Ludhiana. But, since the condition of Ramesh Kumar was deteriorating, so the complainant tried to remove him to Civil Hospital, Samrala, but before reaching there, Ramesh Kumar expired on the way.

Balwinder Singh, SHO and ASI Sukhbir Singh were charge-sheeted for the offence under Section 306 IPC, to which they pleaded not guilty and claimed trial.

The learned Additional Sessions Judge, Ludhiana, after appreciating the evidence, acquitted the accused of the charges framed against them. The trial Court after appreciating the evidence held that much

stress has been laid that Ramesh Kumar was under mental stress on account of registration of NDPS case against him and further he was under constant pressure from accused persons to withdraw the complaints filed by him against the accused persons. The NDPS case was registered against Ramesh Kumar on 24.1.2005 while the complaints against accused persons were filed by him thereafter. The case under Section 15 of NDPS Act could not be cancelled despite approaching higher authorities and only inquiry was ordered. The trial Court held that firstly no date or time had been given in the complaint when the accused persons approached him or issued any such threat. The Court also held that even the wording of alleged threats was required to be spelt out by the complainant before the Court so that it may reach to the conclusion as to whether the same fell within the view of aiding or abetting suicide. The Court also held that the NDPS case was registered on 24.1.2005 and Ramesh Kumar committed suicide on 7.5.2005 and there was no particular instance given to prove the abetment and to show as to what happened during this period. These findings given by the Court are correct as per evidence and law. For proving the abetment, the complainant or the prosecution has to prove by leading cogent evidence that the behaviour/harassment of the accused was of such an extent which compelled the person to commit suicide, but as already held except general allegation that they gave the threats to withdraw the complaint, there is nothing on the record to prove the abetment specially as to what happened on 7.5.2005 or immediate before committing the suicide. Nothing is there that what was the provocation immediately before the occurrence which led

to committing of suicide by Ramesh Kumar. The learned Additional Sessions Judge, Ludhiana, has correctly appreciated the evidence and the findings are as per evidence. A reasonable doubt exists as the complainant failed to lead cogent evidence to prove the abetment to commit suicide. As the abetment to commit suicide has not been proved, therefore, the mere mentioning of oral dying declaration that these accused are responsible is not sufficient evidence to convict the accused.

Therefore, from the above discussion, I find that the reasoning given by the learned lower Court cannot be held as perverse or against the evidence or law. Nothing has been pointed out as to which material evidence has not been appreciated in right perspective or which material evidence has not been considered by the Court. There is nothing on the record as to which finding is perverse or against the law.

Therefore, I do not find any ground to grant leave to file appeal. Hence, finding no merit in the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal, the same is dismissed.

November 18, 2015.

(Inderjit Singh)
Judge

hsp