

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No.A-1793-MA of 2014

Date of Decision : January 16, 2015

State of Punjab

.....Applicant

VERSUS

Beer Bahadur Singh alias Kala and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN

Present : Ms. Manjari Nehru Kaul,
Additional Advocate General, Punjab.

T.P.S. MANN, J.

The State has filed the present application under Section 378(3) Cr.P.C. for grant of leave to appeal against the judgment dated 13.8.2014 passed by the Additional Sessions Judge, Sangrur, whereby the respondents were acquitted of the charges under Sections 399, 402, 307, 483 read with Section 149 IPC and Section 25 of the Arms Act.

The case of the prosecution, in nutshell, was that on 23.12.2013 Inspector Harvinder Singh Khaira, alongwith his fellow officials, was present at bus stand of village Lehal Khurd in connection with patrolling and checking of suspicious persons. At about 4.30 p.m., he received a secret information that accused Beer Bahadur @ Kala while accompanied by

accused Harwinder Singh @ Soma, Balkar Singh @ Bhushan,

Nahar Singh @ Billu, Gurdhyan Singh, Charanjit Singh @ Channi, Nirmal Ali, Anil Kumar, Naresh Kumar and Balraj were indulging in abducting people and releasing them only after collecting money from them. These accused were hatching conspiracy while sitting in the canal rest-house to commit serious offence and were also armed with weapons. Finding the information to be reliable and trust-worthy, Inspector Harvinder Singh Khaira sent a ruqa to the Police Station for registration of the FIR against the accused persons. Thereafter, he, alongwith his fellow officials, reached the disclosed place and surrounded the rest-house. The accused opened fire towards the police party in order to kill them. One shot struck on the glass of police vehicle. In defence, the police party also fired shots. The accused were directed to surrender. When they came out of the rest-house, they were apprehended. Various weapons, including fire arms and knife, besides three vehicles, were recovered from the possession of the accused. Offence under Sections 307 and 427 IPC were also added. Upon completion of the investigation, the accused were challaned. The case was, thereafter, committed to the Court of Sessions, where they were charged for the aforementioned offences, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined

nine witnesses. The plea of the accused, when examined under Section 313 Cr.P.C., was of innocence and false implication. In defence, they examined eight witnesses.

The trial Court, after hearing learned counsel for the parties and going through the evidence available on the record, held that the prosecution had miserably failed to bring home the guilt against the accused for the offences for which they stood charged and, accordingly, the accused were acquitted of the said charges.

From a perusal of paras 21 and 22 of the impugned judgment, it is made out that accused Beer Bahadur Singh @ Kala, who had performed love marriage, was previously known to Inspector Harvinder Singh Khaira. Said Inspector Harvinder Singh Khaira testified that when he was posted as Station House Officer, Lehra, a complaint was filed regarding the said marriage at the instance of father of the girl. Further, both Beer Bahadur Singh @ Kala and his wife had come present at Police Station Lehra and produced the orders of the High Court. He further stated that he raided the house of Beer Bahadur Singh @ Kala before the production of the orders of the High Court. He further conceded that Beer Bahadur Singh @ Kala had filed a writ of habeas corpus against him and the Warrant Officer found Beer Bahadur Singh @ Kala to be in illegal custody of the police. The said raid was conducted

prior to the registration of the present case. He also admitted that a case under Section 382 IPC was registered by him against Beer Bahadur Singh @ Kala at Police Station Moonak, which was cancelled by the Sub Divisional Judicial Magistrate, Moonak, as Beer Bahadur Singh @ Kala was found innocent. Similarly, it is also apparent from the impugned judgment that Gurmail Singh, father of accused Balkar Singh, had submitted an affidavit in the High Court in another habeas corpus petition titled Preetpal Singh Vs. Harwinder Singh Khera and others. The said affidavit was tendered in evidence in the present case as Ex.D5. Therefore, from the above, it is made out that Inspector Harvinder Singh Khaira had reasons to falsely implicate accused Beer Bahadur Singh @ Kala and Balkar Singh.

As regards the offence under Section 483 IPC, the learned Additional Public Prosecutor had fairly conceded before the trial Court that the same had not been proved. Moreover, there was nothing on the record on the basis of which it could be said that any of the three vehicles, which were recovered from the possession of the accused at the time of their apprehension, were stolen. Similarly, there is no material on the record that the accused had attempted to murder Inspector Harvinder Singh Khaira and other police officials and, thus, the charges under Section 307 IPC read

with Section 149 IPC and also under Section 25 of the Arms Act vanish into thin air.

Coming to the offences under Sections 399 and 402 IPC, it may be noticed that as per the secret informer, the accused had assembled in the rest-house in order to commit serious offence. No mention was made by the secret informer that accused intended to commit dacoity. Even otherwise there is no direct evidence to establish the offences under Sections 399 and 402 IPC. Mere assembly of persons with weapons by itself does not prove that the accused were making preparation to commit dacoity. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in Suleman Vs. State of Delhi through Secretary, 1999(2) RCR (Criminal) 337. The conviction of the accused persons therein was set aside on the ground that it was doubtful as to whether the accused were speaking so loudly that their conversation could have been heard outside. It may also be observed that in regard to the charges for offences under Sections 399 and 402 IPC, the prosecution is relying upon the testimonies of PW6 Inspector Harvinder Singh Khaira and PW5 SI Gurmail Singh. Out of them, Harvinder Singh Khaira had his own reasons to falsely implicate Beer Bahadur Singh @ Kala and Balkar Singh. As regards SI Gurmail Singh, it may be noticed that though he testified about lifting two empty

cartridges from the spot by the Investigating Officer and being taken into possession vide recovery memo. prepared in that regard yet these cartridges were not produced before the trial Court. Similarly, the three vehicles though recovered and taken into possession were also not produced. Furthermore, on account of firing resorted to by the accused, the right side mirror of the vehicle was said to have got damaged which mirror was taken into possession and photographs were also collected but no such photographs have been brought on record. Even the broken pieces of glass were not produced.

In view of the above, it is clear that the prosecution has miserably failed to prove its case against the accused respondents beyond reasonable doubt. From the impugned judgment of acquittal passed by the trial Court, it is made out that the same is based upon correct appreciation of the evidence available on the record.

Resultantly, the application is without any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

(SHEKHER DHAWAN)
JUDGE

January 16, 2015
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