

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.38634 of 2015
and
Criminal Misc. No.A-1911-MA of 2015

.....

Date of decision:22.12.2015

Municipal Council now Municipal Corporation, Hisar
...Applicant

v.

Ashwani Kumar and another
...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Dhiraj Chawla, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.38634 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 139 days in filing the criminal miscellaneous application seeking leave to file appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-1911-MA of 2015:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Ashwani Kumar and Naresh Kumar-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 3.1.2015 passed by learned Judicial Magistrate Ist Class, Hisar.

It is mainly stated in the application that the accompanying appeal is being filed against the judgment dated 3.1.2015 passed by learned Judicial Magistrate Ist Class, Hisar, which is likely to succeed on the grounds mentioned therein. The learned trial Court has passed the judgment contrary to the facts of the case and the same is not sustainable in the eyes of law. Therefore, it has been prayed that the leave to file appeal be granted.

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

From the record, I find that complainant-Municipal Corporation, Hisar through its authorized person Ram Kishan, Clerk/Parokar has filed the complaint against Ashwani Kumar and Naresh Kumar-accused/respondents for violation of provisions of Sections 208 and 233 of the Haryana Municipal Act, 1994 (hereinafter referred to as 'the Act'). As per the facts as stated in the complaint, the accused had applied and got sanctioned site plan for commercial purposes from the Municipal Council, Hisar (now Corporation) vide map No.187/2008-09. The accused are raising construction on the said property. According to the site map, the front set back for parking was to be left 19.15 mtrs. x 3.50 mtrs. + 2.05 x 0.25 mtrs. and back rear lawn was to be left 23.81 mtrs. x 5.28 + 2.61 Mtrs./2, but the accused covered and 100% constructed the whole area on each floor in violation of the site plan. After raising illegal construction by the accused persons, there is no space for parking.

The learned Judicial Magistrate Ist Class, Hisar, vide judgment dated 3.1.2015 after appreciating the evidence held that PW-1 has given the

report after spot inspection Ex.C.2. According to this report, the accused is required to left space on front set back and rear lawn and also he is required to cover the specified area but he has covered 100% area on each floor i.e. basement, ground floor, first floor and second floor, therefore, the accused have violated by-laws of the Municipal Act and are liable for the offence under Section 208 of the Haryana Municipal Act, 1973. This report of Suresh Goyal, ME was exhibited by him in his chief. When cross-examined, this witness could not tell the time at which he had inspected the site in question. He could not even tell whether it was evening or day time. He could not even tell how much time he spent there at the time of inspection. He has admitted that he has not taken actual map from the file at the time of inspection. He has also admitted that he has not taken measurement of the site and also did not prepare any sketch or map. He has also admitted that he has not taken snap of the site in question. He has also admitted that he has not prepared the rough notes at the time of inspection and he has prepared the report Ex.C.2 while sitting in his office. PW-1 further stated in cross-examination that on that day he inspected ten buildings and has not prepared rough notes. The trial Court on the basis of this cross-examination and also in view of the fact that no resolution was passed by the Municipal Council (Now Corporation) for filing this complaint and by relying upon the law, acquitted the accused. Nothing has been pointed out as to which material evidence has not been considered and which material evidence has been misread by the Court. Nothing has been pointed out as to how the reasoning given by the learned Judicial Magistrate

Ist Class in the judgment are perverse or against the evidence. The findings given by the learned Judicial Magistrate Ist Class are correct as per evidence and law.

Therefore, the judgment passed by the learned Judicial Magistrate Ist Class, Bhiwani does not require any interference from this Court.

Keeping in view the above discussion, 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.

December 22, 2015.

(Inderjit Singh)
Judge

hsp