

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

Crl. Misc. No.A-1949-MA of 2014

Date of Decision: 15.09.2015

Ajay Kumar

....Applicant

Versus

Lakhwinder Singh and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Vivek Rattan, Advocate
for the applicant.

DAYA CHAUDHARY, J.

Crl. Misc. No.39459 of 2014

There is delay of 27 days in filing of the application under Section 378(4) Cr.P.C for Special Leave to Appeal against the judgment of acquittal dated 15.09.2014 passed by the Additional Sessions Judge, Sangrur. The application is supported by an affidavit.

For the reasons mentioned in the application, the delay of 27 days in filing of the application under Section 378(4) Cr.P.C for Special Leave to Appeal is condoned.

Criminal Misc. Application is accordingly disposed of.

Crl. Misc. No.A-1949-MA of 2014

The applicant-complainant filed a complaint against accused-respondents-Lakhwinder Singh and others on the ground that earlier he was partner of M/s Shashi Foods, Dhuri and the said firm was closed under certain circumstances due to harassment caused by the accused because of demand of illegal gratification for the allotment of rice mills for custom

milling for the crop for the year 2007-08. It was also the allegation in the complaint that accused Parveen Vij and Amarjit Singh Sandhu were the members of allotment committee for custom milling for the crop for the year 2007-08. The complainant applied for provisional registration of M/s S.R. Rice Mills on 17.09.2007 and the said firm was provisionally registered by the accused. On 19.09.2007, accused Lakhwinder Singh, Amarjeet Sandhu, Lal Chand, Rattan Chand (since deceased) and Parveen Vij were present in the Office of DFSC, Sangrur. They called the complainant and others in their office on the pretext of asking for some documents as they were going to clear the name of rice mills for allotment of custom milling for crop for the year 2007-08. The applicant-complainant went to the room of accused and he was told that the papers for completion of formalities were not sufficient for allotment and they had to pay ₹ 1.5 lacs per rice mill, which was to be distributed amongst all members of the allotment committee as well as at the higher level. The complainant refused to pay the illegal gratification. The complainant again met the accused persons and he was asked to wait for two-three days. Thereafter, the complainant came to know that the accused persons had wrongly declared three mills as defaulters. Earlier the name of M/s Shashi Foods, Dhuri was M/s Dhan Devi Rice Mills, Dhuri. In the suit filed by M/s Dhan Devi Rice Mills, it was held by the Court that the firm itself was not defaulter. It was also held by the Court that the guarantee furnished by M/s Dhan Devi Rice Mills was not operative so the rice mill was wrongly declared defaulter. The suit filed by the firm was decreed. The said mill was declared defaulter as sufficient quantity of paddy was not given. In the arbitration case also, the Arbitrator passed award against MARKFED. The State of Punjab was regularly allotting rice mill to complainant for custom milling since 1996-97. It was also mentioned that the assets of the

applicant were excessive to their known source of income. The accused have also violated the law framed by the government for the allotment of paddy under custom milling policy and hence, they have committed offence under Section 165 IPC.

In preliminary evidence, the complainant has examined as many as nine witnesses.

On appreciation of evidence available on file, the said complaint was dismissed and the accused were acquitted of the charge vide judgment dated 15.09.2014 passed by the Additional Sessions Judge, Sangrur on the ground that the complainant has already availed his remedy up to this Court in **Criminal Misc. No.M-21120 of 2008** and vide order dated 17.01.2010, the petition was dismissed and no direction was issued to re-investigate the matter and registration of case under Sections 7 and 13 of the Prevention of Corruption Act. The second complaint was also filed on the same facts. However, the complainant could not point out any evidence either before the vigilance authorities or during inquiry in the earlier complaint and he had failed to point out as to how the earlier order of dismissal of complaint was illegal. The allegations levelled therein were found to be vague and as such, no evidence was found on record to show that any demand was raised for illegal gratification as neither the demand nor any acceptance was proved.

Said judgment of acquittal dated 15.09.2014 passed by the Additional Sessions Judge, Sangrur has been challenged before this Court by way of filing application under Section 378(4) Cr.P.C.

Learned counsel for the applicant submits that the trial Court did not appreciate the evidence on record and dismissed the complaint only on the ground that the earlier complaint was dismissed. The allegations in the complaint can be similar but that do not relate to the

same year. He further submits that the not only the specific demand of illegal gratification was there but time and date was also mentioned in the complaint. Learned counsel also submits that the applicant firm was never declared defaulter by the allotment committee and the documents submitted by the applicant along with the application filed under Section 156(3) Cr.P.C were neither considered nor appreciated in the inquiry. When no action was taken on the complaint by the police then the complaint was filed before the Court.

Heard the arguments of learned counsel for the applicant and have also perused the judgment of acquittal dated 15.09.2014 as well as other documents on the file.

Admittedly, the earlier complaint filed by the applicant-complainant on the same set of allegations was dismissed and the same was challenged before this Court by way of filing **Criminal Misc. No.21120 of 2008** which was also dismissed vide order dated **17.01.2010**. It is also not disputed that same allegations were there in the earlier complaint and in the present complaint. Although there is no statutory bar in filing second complaint on the same facts in case, the previous complaint is dismissed without assigning any reason. The Magistrate may take cognizance of an offence under Section 204 Cr.P.C and issue process if there is sufficient ground for proceeding. The second complaint on the same facts could be entertained only in exceptional circumstances, when it appears to the Court that the previous order was passed on the basis of incomplete record or on misinterpretation of the facts.

This view has been held in judgment of Hon'ble the Apex Court in **Mahesh Chand vs B. Janardhan Reddy and another 2003(1) SCC 734** as under :-

“There is no statutory bar in filing a second

complaint on the same facts. In a case where a previous complaint is dismissed without assigning any reason, the Magistrate under Section 204 Cr.P.C., may take cognizance of an offence and issue process if there is sufficient ground for proceeding. But, the second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or whether new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings have been adduced. The second complaint could be dismissed after a decision has been given against the complainant in previous matter upon a full consideration of his case. Further second complaint on the same facts would be entertained only in exceptional circumstances, namely, where previous order was passed on an incomplete record or on misunderstanding of the complaint or it was manifestly absurd or unjust.”

Similarly, in another judgment of Hon'ble the Apex Court in case **Anju Chaudhary vs. State of U.P. 2013(1) RCR (Criminal) 687**, it has been held as under :-

“ The second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit.”

In the present case, the complainant-applicant has not proved on record, on the basis of statements of witnesses, as to when the demand was made or the amount was accepted. The allegations are vague and moreover, it was inquired by the vigilance authorities. The complainant-applicant could not produce any document to show the allegations in the complaint before the Inquiry Officer. Neither any demand of illegal

gratification has been proved on the basis of statement of witnesses in the preliminary evidence nor any acceptance thereof. Moreover, the earlier complaint on the same set of allegations was dismissed and thereafter, the petition filed by the complainant was also dismissed by this Court.

Accordingly, there is no merit in the contentions raised by learned counsel for the applicant and his prayer for filing Leave to Appeal is declined.

The application is dismissed.

15.09.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE