

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. A-336-MA of 2015 (O&M)

DATE OF DECISION: 12.10.2015

State of Haryana

.....Petitioner

Versus

Dr. Ishwar Singh

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. **Whether reporters of local newspaper may be allowed to see judgment? (Yes/No)**
2. **To be referred to reporters or not? (Yes/No)**
3. **Whether the judgment should be reported in the Digest? (Yes/No)**

Present:- Mr. Vikas Malik, DAG, Haryana.

Mr. Tapan Kumar, Advocate
for the respondent.

DAYA CHAUDHARY, J.

Crl. Misc. No. 6031 of 2015

This application has been filed for condonation of 86 days delay in filing the accompanying application for leave to appeal.

Application is allowed and delay of 86 days in filing the accompanying application for leave to appeal is condoned as per grounds mentioned in the application.

Crl. Misc. No. A-336-MA of 2015

The present application has been filed by the State of Haryana under Section 378 (3) Cr.P.C. for grant of leave to appeal against the judgment of acquittal dated 25.8.2014 passed by Special Judge-cum-

Additional Sessions Judge, Jhajjar.

Briefly, the facts of the case as made out in the present application for leave to appeal are that FIR No. 12 dated 7.6.2012 was registered under Section 7 and 13 (1) (d) of PC Act, 1988 at Police Station SVB (H), Rohtak against accused-respondent, namely, Dr. Ishwar Singh on the basis of complaint made by Dharambir (PW-12) alleging therein that he got insured his buffalo from National Insurance Company Limited but his buffalo had died due to ailment. He met Dr. Ishwar Singh, Veterinary Surgeon, Animal Hospital, Village Dubaldhan in this regard, who demanded ₹ 5000/- as bribe for getting the insurance amount of ₹ 40,000/- for the buffalo. The complainant was not in favour of giving bribe, so in order to take action against the respondent, he made a complaint against him. On the basis of said complaint, a raiding party was constituted and amount of bribe was recovered in the presence of shadow witness. The FIR was registered against the respondent. Respondent faced trial and ultimately he was acquitted of the charges by the trial Court vide its judgment dated 25.8.2014 on the ground that there were material contradictions and inconsistencies in the statements of the witnesses, and that the prosecution had failed to prove the demand as well as acceptance of bribe money by accused-respondent. Even complainant-Dharmabir while appearing as PW-12 and Om Parkash, shadow witness as PW-4 have not supported the case of the prosecution.

The aforesaid judgment of acquittal is subject matter of challenge in the present application for leave to appeal.

Learned counsel for the applicant-State submits that the judgment of acquittal is not based on proper appreciation of evidence. Not only the recovery of bribe amount was made from accused-respondent but the complainant had also admitted his signatures on all the documents i.e.

recovery memo and complaint, which is the basis of registration of FIR. This fact itself is sufficient to show that the accused-respondent had demanded illegal gratification, which was paid to him by the complainant and the same was even recovered by the investigating officer from the possession of accused in the presence of Duty Magistrate and Shadow witness. Learned counsel for the applicant-State further submits that once an amount of ₹ 5000/- was recovered from the possession of the accused then the burden to prove his innocence itself had shifted on the accused but the same has not been done. Not only the demand but even the acceptance has also been proved.

Learned counsel for the respondent submits that totally a different version has been stated by the complainant in his statement recorded under Section 164 Cr.P.C.. The complainant while appearing in the Court has not stated even a single word against the accused-respondent. Not only the complainant but even the shadow witness has not supported the case of the prosecution.

Heard the arguments advanced by learned counsel for the parties and have also gone through the documents available on the file.

Dharambir (PW-12) is the star witness as the FIR was registered on the basis of complaint made by him. He has stated in his statement that his signatures were obtained on blank papers and neither the petitioner demanded nor accepted any bribe from him. The said witness was turned hostile as did not support the case of the prosecution. He was also cross-examined at length but no incriminating evidence has come on record against the accused-respondent.

Similarly, Om Parkash (PW-4), who was appointed as shadow witness in the raiding party and was instructed to accompany the complainant. He stated in his cross-examination that his signatures were

obtained on blank papers in the Veterinary Hospital. He has also stated that the police remained there for about one hour in the BDPO office, Jhajjar and police party obtained his signatures in the BDPO office, Jhajjar.

DSP Sajjan Kumar (PW-7) took a different stand by stating that all writing work was done in the Veterinary Hospital and it took 5 to 6 hours.

A perusal of statements of the prosecution witnesses shows that three witnesses have given different versions with regard to conduct of the proceedings and even with regard to place of effecting recovery. Sajjan Kumar (PW-7) has stated that all the proceedings were conducted at the spot i.e. Veterinary Hospital upto 6.00 pm, whereas, Ram Karan, Duty Magistrate (PW-3) has stated that all the proceedings were conducted in PWD (B&R) Rest House at Jhajjar upto 3 to 4 pm. Om Parkash, shadow witness (PW-4) has stated that proceedings of the case were completed in the BDPO Office at Jhajjar. The statements of aforesaid witnesses are not only inconsistent but contradictory to each other.

Similarly Anil Kumar, Head Constable (PW-1) has stated in his statement that he handed over the special report to Illaqa Magistrate in PWD (B&R) Rest House at 7.00 pm and thereafter he met DSP Sajjan Kumar (PW-7) in Police Lines, Jhajjar at 8.00 pm and handed over the copy of the FIR to him, whereas, DSP Sajjan Kumar (PW-7) has stated that Anil Kumar, Head Constable (PW-1) met him in Veterinary Hospital Dubaldhan at 5.00 pm. Om Parkash, shadow witness (PW-4) during the course of his re-examination even has denied giving the amount as bribe to the accused by the complainant. There is also contradiction with regard to presence of independent witnesses at the time of conducting raid.

In view of the above, the prosecution has failed to prove its case beyond reasonable doubt and the trial Court has rightly acquitted the accused-respondent. I find no infirmity and illegality in the impugned

judgment of acquittal and there being no merit in the contentions raised by learned counsel for the applicant-State, the application for grant of leave to appeal is hereby dismissed.

October 12, 2015
pooja

(DAYA CHAUDHARY)
JUDGE