

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. A-719-MA of 2014 (O&M)

DATE OF DECISION: 10.8.2015

Lakhvir Singh

.....Applicant

Versus

Mohinder Kaur and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspaper may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present:- Mr. Shailendra Sharma, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present application has been filed under Section 378 (3) Cr.P.C. for grant of leave to appeal against judgment dated 16.5.2013 passed by Additional Sessions Judge, Fatehgarh Sahib, vide which, accused-respondents No. 1 to 3 have been acquitted of the charges levelled against them.

Accused, namely, Biru Ram, Desh Raj, Mohinder Kaur, Jagtar Singh and SITO faced trial in case FIR No. 171 dated 5.12.2009 for offences punishable under Sections 363, 366-A, 120-B and 506 IPC registered at Police Station Bassi Pathana. Accused-Mohinder Kaur, Jagtar Singh and SITO were acquitted of the charges levelled against them for offences punishable under Section 120-B, 363 and 366 IPC. However, accused-Biru Ram and Desh Raj were convicted for offences punishable under

Sections 120-B and 363 IPC but they were acquitted for offence punishable under Section 366 IPC vide judgment dated 16.5.2013. The present application for leave to appeal has been filed against the aforesaid judgment of acquittal by the complainant but no appeal against the judgment of acquittal has been filed by the State of Punjab.

Learned counsel for the applicant contends that the learned trial Court has not properly appreciated the evidence available on record as the daughter of applicant-complainant was minor and was kidnapped by accused-Krishan Kumar and could not be traced for a long period. Accused-Krishan Kumar was declared proclaimed offender and respondents No.1 to 3 were close family members of accused-Krishan Kumar. Learned counsel further contends that the learned Additional Sessions Judge has wrongly come to the conclusion that there was a dispute between accused-Biru Ram with his wife Mohinder Kaur and as litigation was pending in the Court, therefore, there was no chance of connivance of accused-Mohinder Kaur with other accused and to enter into conspiracy to kidnap minor daughter of the applicant. The trial Court did not appreciate the fact that the main accused-Krishan Kumar was in close relation of accused-respondents. He also contends that the complainant has specifically stated in his cross-examination that Jagtar Singh had kidnapped his daughter in the presence of other accused persons, namely, Mohinder Kaur and Sito. Even during cross-examination, it was specifically denied that he had involved the accused-respondents due to personal enmity. It is also the argument of learned counsel that the accused persons have failed to lead any evidence to show that they were residing separately from accused-Biru Ram and Krishan Kumar.

Heard the arguments advanced by learned counsel for the applicant and have also gone through the judgment of acquittal as well as

relevant record available on the file.

Brief facts of the prosecution story are that applicant-complainant-Lakhvir Singh moved an application to SSP, Fatehgarh Sahib levelling allegations that accused persona, namely, Krishan Kumar, Biru Ram, Desh Raj, Mohinder Kaur, Jagtar Singh and Sito Devi had kidnapped his minor daughter on 14.11.2009. On the basis of complaint made by applicant-complainant, FIR No. 171 dated 5.12.2009 was registered under Sections 363,366-A, 120-B and 506 IPC at Police Station Bassi Pathana. During the investigation, Biru Ram, Desh Raj were arrested and accused Krishan Kumar was declared as proclaimed offender. Accused-Mohinder Kaur, Jagtar Singh and Sito Devi were declared innocent and were kept in column No.2. by the police. Challan was presented only against Desh Raj and Biru Ram. Accused-respondents, namely, Mohinder Kaur, Jagtar Singh and Sito Devi were summoned on the basis of an application moved by the prosecution under Section 319 Cr.P.C. The trial Court acquitted accused-respondents of the charges framed against them vide judgment dated 16.5.2013. Now the present application for leave to appeal has been filed challenging the aforesaid judgment of acquittal by raising various arguments.

A specific finding has been recorded by the trial Court that there was no evidence against the accused-persons with regard to conspiracy or connivance. Even the applicant-complainant has failed to extract any material which would create doubt of connivance and conspiracy of aforesaid accused. It has also been mentioned in the findings by the trial Court that the prosecution has failed to prove the ingredients of offence punishable under Section 366 IPC against the accused-respondents. Not only the applicant-complainant but even other witnesses have not been able to prove involvement of the accused-

respondents. During investigation, accused-respondents No.1 to 3 were found innocent and they were put in column No.2 of the challan and subsequently were summoned on an application moved under Section 319 Cr.P.C. Complainant himself has admitted that accused-Jagtar Singh, his wife-Sito Devi and his mother-Mohinder Kaur were found innocent by the police during inquiry conducted by DSP, Bassi Pathana. ASI Gurmail Singh while appearing as DW-2 has also proved the inquiry report Ex. D3. A perusal of cross-examination of the complainant would show that he himself has admitted that Mohinder Kaur had filed a complaint against her husband Biru Ram and he (complainant) stood surety for Biru Ram. There was no independent evidence with regard to prove conspiracy or connivance of aforesaid accused-persons.

From the findings recorded by the trial Court, it is apparent that the prosecution has failed to prove the allegations against accused-respondents Mohinder Kaur, Jagtar Singh and Sito Devi and accordingly they were acquitted of the charges framed against them by the trial Court. Learned counsel for the applicant-complainant has not been able to show any evidence regarding involvement of accused-respondents in the offences and any illegality even in the findings recorded by the trial Court.

In view of what has been discussed above, there is no merit in the contentions raised by learned counsel for the applicant-complainant and as such the application for grant of leave to appeal is hereby dismissed.

August 10, 2015
pooja

(DAYA CHAUDHARY)
JUDGE