

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-766-MA of 2014 (O&M)

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Date of decision:20.1.2015

Rajiv Gulati

...Applicant

v.

Sanjay Kumar and another

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Pritam Saini, Advocate for the applicant.

Mr. Raghav Sharma, Advocate for the respondents.

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Inderjit Singh, J.

This criminal miscellaneous application has been filed under Section 378(4) of the Code of Criminal Procedure ('Cr.P.C.' for short) seeking leave to file an appeal against the impugned judgment of acquittal dated 6.3.2014 passed by learned Additional Chief Judicial Magistrate, Kurukshetra, vide which the respondents/accused have been acquitted for the offences under Sections 406 and 420 IPC.

Notice of motion has been issued in this case.

Mr. Raghav Sharma, learned Advocate has put in appearance on behalf of the respondents/accused and contested this application.

I have heard learned counsel for the petitioner and learned counsel for the respondents/accused and have gone through the record,

especially the impugned judgment dated 6.3.2014 passed by the learned Additional Chief Judicial Magistrate, Kurukshetra.

The brief facts of the complainant's case are that respondents/accused deal in the business of sending the young boys and girls abroad to get them employed there. About nine months ago, accused approached the complainant and assured that he would be sent abroad i.e. Canada and would be settled on good post and for which both the accused demanded an amount of ₹6 Lacs from the complainant. On 20.6.2007, both the accused/respondents received ₹3 Lacs from the complainant at Ladwa in the presence of Parveen Kumar and Satpal Anand. Accused No.1 also executed a valid receipt duly stamped and signed by him. The accused also received passport and photos of the complainant for getting Visa. Thereafter, the accused neither sent the complainant to Canada nor returned his amount. The complainant approached the accused/respondents for return of his amount, but they threatened to kill him. The matter was reported to the Police, but in vain. The complainant examined himself as CW-1, Satpal as CW-2 and Parveen Kumar as CW-3.

The learned trial Court finding prima case against the accused, framed charges for the offences under Sections 406 and 420 IPC, to which they pleaded not guilty and claimed trial.

The learned Additional Chief Judicial Magistrate, Kurukshetra, vide the impugned judgment discussed the facts in minute detail and held that CW-1 complainant in cross-examination has specifically deposed that he had not moved an application before the

Passport Authority nor he obtained duplicate copy of the same. The Court held that the complainant has failed to prove that he is having the passport. CW-2 Satpal is the witness to the receipt Ex.C.1. CW-3 Parveen Kumar is a witness in whose presence the amount of ₹3 Lacs was stated to be given by the complainant to the accused and he also signed the receipt Ex.C.1.

DW.1 Ramesh Chander on the other hand deposed that he knew the parties to the complaint. Sanjay used to sell, vegetables and his wife is a household lady. Sanjay had opened his committee account with Rajiv. He further deposed that a quarrel took place between the complainant and accused regarding some money transactions. At the first instance, Sanjay moved a complaint against the complainant and later on complainant moved complaint against Sanjay. The complaint moved by the complainant against the accused for sending abroad was found to be false one and in the inquiry conducted on the complaint, he was examined as a witness and his statement was also recorded. The complainant moved an application before S.H.O., Police Station Ladwa on 25.2.2008 and produced the receipt executed by accused No.1.

During the inquiry, which was got conducted, statements were recorded and it was found that it was the complainant, who had given the amount to the accused which was deposited by him in the chit fund company of the accused. The statement of the complainant was also recorded by the Police of Police Station Ladwa, wherein it was mentioned by him that he had already filed a criminal complaint in the Court. When

the inquiry was pending before the Police, the complainant filed this complaint. The Court also found that the defence of the accused is certified from document placed on Court file Ex.D.1 and complaint under Section 12 of the Consumer Protection Act filed by accused No.1 against M/s Jogdhiyan Chits Pvt. Ltd. That complaint was filed on 27.12.2011, which means it was filed earlier to the present complaint, which was filed on 19.3.2008. The accused has also placed on the record Court file as Ex.D.9 to Ex.D.28, which go to show that he was depositing money in the Chit Fund Company run by the complainant along with his partner. The Court after going through the receipt Ex.C.1 also doubted its genuineness as it was signed by accused Sanjay Kumar twice i.e. on left side of the receipt as well as on the stamp pasted on the receipt.

The findings of the learned Additional Chief Judicial Magistrate, Kururkshetra given in the impugned judgment dated 6.3.2014 are correct and as per law. From the perusal of the reasoning given by the Court below, in no way, it can be held that the findings are illegal, perverse or the material evidence has been misread etc.

Therefore, from the above, I do not find any ground to grant leave to file appeal. Consequently, finding no merit in the criminal miscellaneous application filed under Section 378(4) Cr.P.C. seeking leave to appeal, the same is dismissed.

January 20, 2015.

(Inderjit Singh)
Judge

hsp