

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No. A-789-MA of 2015

Date of Decision : July 10, 2015

State of Haryana

.....Applicant

Versus

Ashish

....Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. Dhruv Dayal, Deputy Advocate General, Haryana

T.P.S. MANN, J.

The State of Haryana has filed the present application under Section 378(3) Cr.P.C. for grant of leave to appeal against the judgment dated 27.11.2014 passed by the Additional Sessions Judge, Panipat.

Vide impugned judgment, the trial Court acquitted accused Ashish of the charges under Section 148 and Section 307 read with Section 149 IPC as well as Section 25 of the Arms Act.

The case of the prosecution, in nutshell, is that on the night of 29.2.2012, complainant Deep Chand, alongwith his son Sunil, was sleeping in the Chobara of his house. At about 9.30 p.m., he heard a knock at the door of his house. The person, who was knocking the door, called complainant to come out of the house. The complainant identified the person calling him by his voice to be accused Ashish. The complainant started making phone calls from his mobile. He again heard a noise outside his house. The caller threatened to break open the door as he had come to teach him a lesson for filing false criminal cases. The complainant's son also

made phone calls to other family members. When the complainant opened the side door, he saw two persons standing at the front door. On seeing the complainant, they raised a *lalkara* to fire at him. Accused Ashish came downstairs from the rear door and fired 2/3 shots at the complainant from pistol. The complainant immediately closed the door and made a call at phone No.0180-2699136. He also saw a car of black colour parked in the middle of the road. The accused hurled filthy abuses at the complainant. A number of persons residing in the neighbourhood gathered at the spot. The police also reached there. However, the accused fled from the spot.

Having heard learned State counsel and on going through the impugned judgment of acquittal, this Court finds that though accused Ashish was tried alongwith four others for the aforementioned offences and all of them were acquitted by the trial Court yet the State has chosen to file the present application in order to challenge the acquittal of accused Ashish only. Even otherwise, the prosecution case appeared to be highly improbable. No injury was alleged to have been suffered, either by the complainant or his son Sunil. Though, according to the prosecution, three shots were fired yet only one fire cartridge was recovered and, that too, was found lying outside the house of the complainant. No fired cartridge was recovered from the spot nor any bullet mark was found on the walls of the complainant's house. Further, though a number of persons had allegedly gathered at the spot yet none out of them was examined by the prosecution in support of its case. The prosecution relied upon the testimonies of complainant Deep Chand himself as

well as his son Sunil, who stepped into the witness-box as PW2 and PW3, respectively. The occurrence was said to have taken place on 29.2.2012 at about 9.30 p.m. but the matter was reported to the police by complainant Deep Chand on 1.3.2012 at about 4.00/4.30 p.m. The delay of more than fifteen hours in lodging of the FIR remains unexplained. There have been long standing litigation between the families of the complainant and of accused Ashish and, therefore, the complainant had reason to falsely implicate accused Ashish.

In view of the above, it cannot be said that the prosecution had led cogent and convincing evidence to prosecute accused Ashish. Therefore, no case is made out for any interference in the impugned judgment.

Resultantly, the application is dismissed and leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(MAHAVIR S. CHAUHAN)
JUDGE

July 10, 2015
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