

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc.No.A-865-MA of 2015 (O&M)

Date of decision: 08th December, 2015

Krishan Yadav

...Applicant

Versus

Sushila Devi

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Mukesh Yadav, Advocate, for the applicant.

INDERJIT SINGH, J.

Criminal Misc.No.16684 of 2015

This is an application for condonation of delay of 39 days in filing the application for grant of leave to file appeal.

Heard. For the reasons, mentioned in the application, the same is allowed. Delay of 39 days in filing the said application is condoned.

Criminal Misc.No.M-865-MA of 2015

Applicant has filed the instant application under Section 378 (4) Cr.P.C. for grant of leave to file appeal against acquittal.

It is mainly stated in the application that applicant is filing the accompanying appeal which is likely to succeed on the grounds taken therein. The applicant is having a prima facie good case. The balance of convenience is in his favour. It is further stated that if the leave is not granted, it will cause miscarriage of justice to the applicant.

Brief facts of the case are that applicant-complainant

Krishan Yadav (hereinreferred as 'the complainant') filed a complaint under Section(s) 166/217 IPC against respondent-accused Sushila Devi (hereinreferred as 'the accused'). It is stated in the complaint that accused is a Sarpanch of Gram Panchayat, Malra Sarai and being Sarpanch, it is her primary duty to perform her duty in accordance with law and take care of movable or immovable property of Gram Panchayat land comprising of Khewat No.446 Khatoni No.503 Khasra No.110 rakba measuring 43 kanals 2 marlas. Gram Panchayat is owner in possession. Nobody has concern with the ownership and possession of the said land. One Ram Sawroop had illegally encroached upon the said land in the year 1988. After that complaint was filed which was decided vide order dated 07.02.1996 and a fine of Rs.6,000/- per hectare from 1988 was imposed upon Ram Sawroop. After that Ram Sawroop filed an appeal against the said order, before the Commissioner, Gurgaon, who remanded back the matter to Assistant Collector First Grade to decide the title of said land. On 11.09.1998, Assistant Collector First Grade decided that as per jamabandi 1999-2000 BK to 1954-55, land was banjar kadimi and Ram Sawroop has illegal encroachment upon the said land. Ram Sawroop again filed an appeal against the order dated 11.09.1998, which was dismissed. The complainant filed an application to execute the order dated 07.02.1996. Now no appeal is pending. It is further stated that due to the efforts of the complainant, land measuring 43 kanals 2 marlas was taken by Gram Panchayat from

the illegal possession of Ram Sawroop but fine imposed by Assistant Collector First Grade is not realized till today. It is stated in the complaint that in election of Gram Panchayat, Ram Sawroop supported the accused and in return accused supported him and never tried to get vacated the said land from the possession of Ram Sawroop. Ram Sawroop has again established his illegal possession over the land measuring 43 kanals 2 marlas and he is cultivating the same. Hence, the complainant filed the complaint.

On the basis of preliminary evidence produced by complainant, accused was summoned to face the trial.

The learned Court below, on the basis of evidence, acquitted the accused of the charge(s) framed against her, as stated above.

I have heard learned counsel for the applicant and have gone through the record especially the impugned judgment, passed by the learned Court below.

Learned Court below has discussed the provisions of Sections 166 and 217 IPC. As per these Sections, the main ingredient is that the accused was a public servant and he knowingly disobeyed the directions of law in relation to the conduct as a public servant. There is no evidence on record as to what directions were given to her and what he had knowingly not complied with. The learned Court below has correctly discussed the defence evidence produced by the accused and the cross-examination of the

complainant in which the complainant admitted that he was not present in the auction proceedings. Document Ex.CW2/A shows that an FIR was lodged against Ram Saroop under Section 447 IPC in which the prosecution has failed to prove the guilt beyond reasonable doubt. Documents Ex.D1 to Ex.D16 show that the accused Sushila passed resolution for auction of land measuring 43 kanals 2 marlas but in that auction, nobody came to give bid. Documents Ex.D17 to Ex.D30 show that numerous times, Gram Panchat passed resolution in this matter and copy was also sent to BDPO. It is also held by the learned Court below that the complainant failed to produce any other evidence of village Malra Sarai to prove the guilt of the accused.

Keeping in view the findings of the learned Court below, this Court finds that the findings are returned as per evidence and law. Nothing has been pointed out as to which material evidence has not been considered and as to which material evidence has not been read by the learned Court below. Even nothing has been pointed out as to how the findings returned by the learned Court below are perverse.

From the above discussion, no ground to grant leave to the applicant to file appeal is made out.

Therefore, finding no merit in the instant application, the same is dismissed.

08th December, 2015
mamta

(INDERJIT SINGH)
JUDGE