

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.A-996-MA of 2014

.....

Date of decision:4.9.2015

Lt. Col. Anil Kabotra (Retd.)

...Applicant

v.

Raj Kumar Khosla and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Sandeep Khunger, Advocate for the applicant.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Raj Kumar Khosla and others-respondents for grant of leave to appeal against the judgment of acquittal dated 15.4.2014 passed by learned Chief Judicial Magistrate, Pathankot.

It is mainly stated in the application that the applicant had filed a complaint for the offences under Sections 452, 323, 380, 120-B and 506 IPC against the respondents. The applicant had filed Criminal Misc. No.M-10264 of 2014 before this Court for summoning the remaining accused. The learned trial Court vide judgment dated 15.4.2014 acquitted all the three accused, namely, Gagan Marwaha, Smt. Geeta Marwaha and Ankur Khosla of the charges levelled against them. The judgment of the learned

trial Court is contrary to the law and facts and is liable to be set aside. It is prayed that leave to appeal against the order of acquittal dated 15.4.2014 passed by learned Chief Judicial Magistrate, Pathankot may be granted.

I have heard learned counsel for the applicant and have gone through the record.

From the record, I find that FIR No.43 dated 14.12.2006 for the offences under Sections 452, 323, 380, 120-B and 506 IPC was registered in Police Station Division No.2, Pathankot. The cancellation report was filed in this FIR and same was accepted. The protest petition of the complainant was treated as a complaint. On the basis of summoning order, only three accused, namely, Gagan Marwaha, Smt. Geeta Marwaha and Ankur Khosla were summoned for the offences under Sections 452, 323 and 506 IPC. The accused filed revision petition against the summoning order and the complainant also filed petition for not summoning other accused and also under all sections etc. When these petitions were pending, no stay was granted by the Court in those proceedings. The opportunities were given for pre-charge evidence including the last opportunity, but no witness was examined. On 4.4.2014, despite availing numerous opportunities including the last opportunity, the complainant failed to produce pre-charge evidence. Rather, an application was filed for personal exemption which was allowed, but the Court closed evidence by order and discharged the accused vide order dated 15.4.2014.

At the time of arguments, learned counsel for the applicant only argued that when the exemption of the complainant was allowed, then the

Court below should have adjourned the case for pre-charge evidence. From the record and after hearing arguments, I find that the learned counsel for the applicant has nowhere argued that reasonable opportunities were not granted to the complainant to produce and complete the pre-charge evidence.

A perusal of the impugned order shows that the charges have not been framed by the learned Chief Judicial Magistrate vide order dated 15.4.2014 as no evidence has been produced by the complainant for the purpose of pre-charge evidence. The accused have been discharged in this case. It is not a summons case. The case was warrant trial and no evidence has been produced for the purpose of charge and, therefore, the accused have been discharged by the impugned order. In no way, this order dated 15.4.2014 amounts to acquittal.

Therefore, against this order an appeal is not maintainable. This application filed under Section 378(4) Cr.P.C. is also not maintainable. Only criminal revision petition lies against the order dated 15.4.2014.

Therefore, this application filed under Section 378(4) Cr.P.C. along with the appeal, being not maintainable, is dismissed.

September 4, 2015.

(Inderjit Singh)
Judge

hsp