

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No. 13793 of 2016 IN
CRM No. 6158 of 2013 and
CRM-A-43-MA of 2013

Date of Decision: 6.5.2016

Devender Singh

....Appellant.

Versus

State of Haryana and another

...Respondents.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICEINDERJEET SINGH.**

PRESENT: Mr. Sunil Saharan, Advocate for the applicant-appellant.

AJAY KUMAR MITTAL, J.

CRM No. 13793 of 2016

This is an application under Section 482 of the Code of Criminal Procedure, 1973 (in short “the Code”) for recalling the order dated 26.3.2013 vide which the application under Section 378(4) of the Code was dismissed for non-prosecution.

For the reasons mentioned in the application which is supported by an affidavit of the learned counsel, the order dated 26.3.2013 is recalled and the application is restored to its original number. CRM stands disposed of accordingly.

CRM No. 6158 of 2013

For the reasons stated in the application which is supported

by an affidavit of the applicant, the delay of 88 days in filing the application for grant of leave to appeal is condoned.

CRM stands disposed of accordingly.

CRM-A-43-MA of 2013

1. The present application has been filed under Section 378(4) of the Code of Criminal Procedure, 1973 (in short "the Code") for grant of leave to appeal against the judgment of acquittal dated 23.8.2012 passed by the Additional Sessions Judge, Hisar.

2. A few facts necessary for adjudication of the instant application as narrated therein may be noticed. The applicant-appellant got FIR No. 825 dated 20.12.2011, under Section 302 of the Indian Penal Code, 1860 (IPC) and Section 27 of the Arms Act registered at Police Station Civil Lines, Hisar against his father-respondent No.2 on the allegations that his father had a licensed .12 bore gun. His father had a dispute with the applicant's mother-Late Smt. Narayani Devi (wife of the accused-respondent No.2), regarding partition of the land. On 20.12.2011 at around 8/8.30 AM, respondent No.2 abused Smt. Narayani Devi and in a fit of rage fired two shots from his licensed gun at her. On hearing the noise of the shots, he reached the spot and found blood oozing from the body of his mother. As per the version in the FIR, the brother-in-law of the applicant, namely, Sunil had also witnessed the occurrence. Smt. Narayani Devi succumbed to the said injuries.

3. After registration of the FIR, the Investigating Agency arrested respondent No.2. After completion of investigation, the Investigating Agency presented the final report under Section 173 of the Code in the Court of competent jurisdiction. Charges were framed on 2.5.2012 against respondent No.2 under Section 302 of IPC and Section

27 of the Arms Act.

4. After charges were framed, the prosecution examined two witnesses, namely, the applicant-Devinder Singh as PW1 and his brother-in-law Sunil Kumar as PW2.

5. Both the witnesses did not support the prosecution's version, when their testimonies were recorded by the trial court. Both of them were declared hostile by the Public Prosecutor and were cross-examined by him. Even during the said cross-examination, nothing favouring the prosecution could be elicited from them. The applicant went to the extent of stating categorically that his mother had not been murdered by respondent No.2-accused. He also denied having made a statement before the police and added that the police had obtained his signatures on blank papers.

6. PW2 also did not support the prosecution version. The trial court after taking evidence into consideration, found that there was no evidence against the accused, dispensed with recording of his statement under Section 313 of the Code. The trial court acquitted respondent No.2 of the charges framed against him vide judgment dated 23.8.2012. Aggrieved by the said judgment, the applicant has filed the instant application for grant of leave to appeal.

7. Learned counsel for the applicant-appellant has contended that he had set the criminal administration of justice into motion by getting the FIR registered against respondent No.2. However, later on, when his testimony was recorded in the Court, he could not support the prosecution case on account of pressure mounted upon him by his relatives, the accused being his father.

8. After hearing learned counsel for the applicant-appellant, we

do not find any merit in the application for grant of leave to appeal as the applicant himself had admitted that he did not support the prosecution version, when evidence was recorded by the trial court. Only this admission of the applicant-appellant being the material witness, is sufficient to dismiss the application in hand.

9. Further, there is no evidence on record to connect respondent No.2 with the crime alleged to have been committed by him. The trial court had recorded that both the material witnesses, i.e., PW1 Devender Singh and PW2 Sunil Kumar have not supported the version of the prosecution and specifically stated that accused-respondent No.2 had not caused death of Smt. Narayani Devi. Both the said witnesses were declared hostile.

10. Learned counsel for the appellant was unable to show any infirmity in the findings recorded by the trial court. Further, in the absence of any corroborative and legally admissible evidence, we find no ground to interfere with the judgment passed by the trial Court. Accordingly, the application for grant of leave to appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

May 6, 2016
gbs

(INDERJEET SINGH)
JUDGE