

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.21732 of 2014
and
Criminal Misc. No.A-1135-MA of 2014

.....

Date of decision:12.5.2016

Sumer Chand

...Applicant

v.

State of Haryana and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. A.K. Handa, Advocate for the applicant.

Mr. Vikramjit Singh, Additional Advocate General, Haryana
for the respondent-State.

Mr. M.S. Khillan, Advocate for respondents No.1 and 2.

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Inderjit Singh, J.

Criminal Misc. No.21732 of 2014:

For the reasons mentioned in the criminal miscellaneous application, the delay of 42 days in filing the criminal miscellaneous application seeking leave to file appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.M-1135-MA of 2014:

Notice of motion of criminal miscellaneous application under
Section 378(4) Cr.P.C. Learned counsel for the respondents, who are

already appearing with regard to application for condonation of delay, have accepted notices. Learned counsel for the parties request to take up this application for hearing today also.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against State of Haryana etc.- respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 28.1.2014 passed by learned Judicial Magistrate Ist Class, Karnal, whereby the complaint filed by the complainant/applicant for the offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') has been dismissed and the accused/private respondents have been acquitted.

It has been mainly submitted in the application that the applicant is filing the accompanying criminal appeal against the judgment of acquittal which is likely to succeed as per grounds mentioned therein. It has been further stated that the learned trial Court has failed to appreciate the law framed in respect of Sections 420, 406, 506 and 120-B IPC in its right perspective and as per the evidence and documents available on record. It is also stated in the application that the learned Magistrate failed to apply its judicial mind while acquitting the accused. It has been prayed that the application may be allowed and in the interest of justice leave to file appeal may be granted against the judgment of acquittal.

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

The brief facts of the complaint as noted down by the learned

Judicial Magistrate Ist Class, Karnal, in its judgment dated 28.1.2014 are as under:-

“Complainant initiated this criminal proceeding against the accused persons by filing present private complaint. Complainant's son Mohan Lal and accused No.2 Rachit alias Chinu were best friend and complainant's son was on visiting terms at the house and shop of accused No.1 and 2. Accused No.1 and 2 have shop No.127 in Anaj Mandi Taraori, who indulge in purchasing the stolen paddy crops. The complainant's son informed to the police in this regard and due to this reason, accused No.1 and 2 had been nursing grudge against complainant's son. It is alleged that a case FIR No.3 dated 10.01.2008, under Sections 457, 380 of IPC was registered in police station Taraori regarding the theft of paddy. The complainant's son was apprehended by the police and kept in illegal confinement for 8 days. After investigation by the police, complainant's son was found innocent and the real culprits were arrested by the police and complainant's son was set free by the police. It is alleged that due to false allegations, a panchayat was convened. All the three accused were present there. In the said panchayat, accused No.1 and 2 on account of their above said grudge leveled false allegations of the theft of paddy against the son of the complainant. Whereas, the complainant had pleaded the innocence of his son. The accused

persons persuaded the complainant to pay Rs.2,00,000/- to accused No.3 Mohan Rana as a security amount and assured that if his son is found innocent by the police security amount will be returned to him. It is alleged that upon the asking of accused No.1 and 2, the complainant had paid the amount of Rs.2,00,000/- to accused No.3 Mohan Rana in the panchayat in the presence of Pardeep Kumar son of Silk Raj and Rinku son of Rajinder Kumar and Mohan Lal son of Sh. Puran. It is alleged complainant's son was found innocent vide report dated 05.02.2009 submitted by the police. It is alleged that complainant's son was found innocent and complainant approached and requested accused No.3 Mohan Rana to return the above said amount of Rs.2,00,000/- as police investigated the case thoroughly and his son has been found innocent vide report dated 05.02.2009 but accused No.3 has been postponing the matter. The complainant also approached and requested the accused No.1 and 2 panchayat members to ask the accused No.3 to return the amount of Rs.2 Lacs to the complainant which was entrusted to accused No.3 as security. It is alleged all the three accused had hatched a criminal conspiracy with each other and they were having dishonest and fraudulent intention to cheat and defraud the complainant and they did not return this amount to him. It is alleged that the accused persons threatened that if the complainant would demand his money

back, he and his family members will be killed. In this manner, the accused had cheated the complainant, thus, the present complaint was filed. After consideration the preliminary evidence and hearing learned counsel for the complainant, the accused persons ordered to be summoned to face trial for commission of the offences punishable under Sections 406, 120-B and 506 of the Indian Penal Code.”

Accused No.1 and 3, namely, Shiv Charan and Mohan Rana were charge-sheeted for commission of the offences under Sections 120-B, 406 and 506 IPC, to which they pleaded not guilty and claimed trial.

The complainant examined himself as Sumer Chand as CW-1, CW-2 Pardeep, CW-3 Rinku, CW-4 Rajpal. After charge, he examined CW-5 Mohan and closed the evidence.

The accused were examined under Section 313 Cr.P.C. wherein they denied the allegations of prosecution and pleaded innocence. However, no evidence in oral was produced.

The learned Judicial Magistrate Ist Class, Karnal, after discussing the evidence on record acquitted the accused. I have gone through the judgment passed by the learned Judicial Magistrate Ist Class, Karnal. This judgment is correct as per evidence and law. The evidence has been appreciated in right perspective. In no way, the judgment can be held as perverse. Nothing has been pointed out at the time of arguments as to which material evidence has been misread by the Court below or which material evidence has not been considered by the Court. As per the complainant's version a panchayat was convened and the panchayat

including accused No.1 Shiv Charan pressurised the complainant to pay ₹2 Lacs to Mohan Rana. There is no document of any type on record to prove payment of ₹2 Lacs to Mohan Rana as neither Mohan Rana nor Shiv Charan are the Sarpanch or Members of the Panchayat. No month or date has been given on which the amount was paid. Further more, the version looks otherwise doubtful. The FIR has been registered by the Police under Sections 457 and 380 IPC against three persons including the son of the complainant. It is for the Police to see during the investigation as to whether the son of the complainant is involved in the commission of the offence or innocent. No reason or ground has been given as to why the panchayat was convened and why it was agreed by the complainant that if his son was found involved in the embezzlement then ₹2 Lacs would be confiscated to the Panchayat. There is nothing that this amount will be confiscated by Mohan Rana. Nor he, in any way, has concern with the dispute. The Court below after perusing the evidence held that CW-2 Pardeep, who was only non-interested person examined by the complainant, did not corroborate CW-1 complainant on material facts at all. He stated that panchayat was convened and security amount was paid in the panchayat but Pardeep Kumar did not mention any person present in the panchayat to whom money was entrusted and he denied that any amount was given in his presence and did not name any of the accused person. CW-3 stated to the fact that the panchayat was convened and money security was placed in front of 10 and 12 people in the panchayat. Again CW-3 also did not specifically mention that to whom the amount was given. CW-4 Rajpal is

[7]

son-in-law of the complainant and interested witness. He also admitted in cross-examination to the fact that the name of Mohan Rana accused No.3 was not mentioned by him in his statement Ex.D.3 before the Police. CW-5 Mohan son of Puran Chand friend of CW-5 admitted in his cross-examination that he was not present in any panchayat convened for demanding back of the security money from accused No.3 and he is only having knowledge about the panchayat in which security of ₹2,00,000/- was placed before the panchayat. CW-5 Mohan's deposition is based upon hearsay evidence that the security was given in the panchayat by his father. He also admitted that he came to know the entire story from his father and does not have any personal knowledge of the same.

Keeping in view the findings given by the learned Judicial Magistrate Ist Class, I find that these findings have been given as per evidence and law and do not require any interference from this Court.

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

May 12, 2016.

(Inderjit Singh)
Judge

hsp