

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1513-MA of 2015 (O&M)

Date of decision: April 04, 2016

Jatinder Kumar

...Applicant

Versus

Sardool Chand and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Hitesh Kumar Sammi, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Jatinder Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Sardool Chand and other respondents, challenging the impugned judgment dated 22.07.2015 passed by learned JMIC, Rajpura, whereby the accused-respondents were acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is also stated that learned JMIC, Rajpura has wrongly acquitted all the respondents from the charges framed against them only on the point of presumption or assumption. It is, therefore, prayed that leave to appeal be granted.

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

As per the record, the complainant Jatinder Kumar filed a complaint against accused Sardool Chand, Ashok Kumar, Krishna Devi @ Gobbry and Hans Raj under Sections 420, 406 and 120-B

IPC. As per complainant's version, father of the complainant is working in Haryana Police. Complainant and accused party came in touch with each other due to same caste and accused Nos.1 to 3 told the complainant that one of their relative namely Hans Raj accused No.4 was travel agent and he can send the complainant abroad. He promised father of the complainant to send the complainant to England and to get him job there. Amount of ₹7 lacs was demanded and father of the complainant gave ₹3 lacs as part payment to accused persons. Copy of school certificate and original passport was also taken by them for the purpose of preparation of documents. It was also settled that remaining amount will be paid when complainant will reach England and settle there. However, in spite of taking ₹3 lacs, accused persons had not sent the complainant to England and requested the accused to return back the amount and passport but they refused to return the money but returned the passport.

In the statement under Section 313 Cr.P.C., accused stated that they are innocent and falsely implicated. The complaint has been filed by the complainant in collusion with his father in order to take revenge from them as well as other co-accused as they helped to their nephew Balwinder Singh with whom the sister of the complainant was previously married and said Balwinder Singh was also acquitted from the charges framed under Section 498-A IPC. It is further stated that complainant party has not given a single penny to them. They are simpleton type of persons and not doing the business

of sending the persons to abroad and on the other side, the complainant party belongs to an educated family and serving in police and having knowledge about the law. They hatched a conspiracy in order to falsely implicate accused.

Learned JMIC, Rajpura, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 22.07.2015.

I have gone through the judgment dated 22.07.2015 passed by learned JMIC, Rajpura. I find that that the findings given by learned Magistrate are correct, as per evidence and law. In no way, the findings can be held as perverse i.e. against the evidence and law. No illegality has been committed while passing the impugned judgment. Nothing has been pointed out as to which material evidence has been misread or which material evidence has not been considered by the Court below. Father of the complainant namely Puran Chand is serving in the Haryana Police whereas the complainant and his brother, are serving in Punjab Police, which means that the complainant party is well educated and knew the technicalities of law. They cannot be held as simpleton persons. There is no document on the record to show the source of money given to the accused. There is no document on record to show the payment of money to the accused. There is also no documentary evidence on the record to show as to from which bank the money in question has been withdrawn etc.

The Court held that the daughter of Puran Chand was

married to nephew of Sardool Chand accused No.1. CW-1 Dharam Chand, uncle of the complainant has stated that accused enticed Puran Chand to give ₹7 lacs for sending complainant abroad. On 20.10.2006, accused took ₹3 lacs from Puran Chand in his presence but in the complaint, there are no such averments that when the money was paid, this witness was also present. In cross-examination, this witness has admitted that both the sons of Puran Chand are serving in Punjab Police. He further stated that his brother had withdrawn money from Bank and Baldev Raj had given amount of ₹1 lac or ₹1.5 lac to accused. No reliance can be placed on the statement of this witness, who was not knowing as to how much money was given by Baldev Raj to the accused. The complainant examined Baldev Raj as CW-2. He also deposed on the same lines of CW-1. He has further stated that out of ₹3 lacs, ₹2 lacs were given by him to Puran Chand. In cross-examination, he admitted that he had not withdrawn the amount of ₹2 lacs from any bank. The complainant examined his father Puran Chand as CW-3 who in cross-examination has stated that earlier litigation was pending between him and Raghbir Singh regarding family dispute. No permission was taken by him from his department for filing the complaint against Raghbir Singh. He further stated that he is owner of 5-6 kilas of land but he cannot produce jamabandi or girdawari etc. CW-4 complainant admitted in cross-examination that Sardool Chand was mediator in marriage of his sister with Balwinder Singh.

The Court below held that though the complainant in

complaint has stated that they had filed an application at police station Ghanour for taking action against accused but no such application or DDR has been proved by the complainant. This fact creates doubt in the complainant's version, especially keeping in view the fact that father of complainant was serving in police department. The Court below further held that the complainant has not placed on record any bank statement to prove that the amount in question was withdrawn from the bank by father and uncle of the complainant and no documentary proof qua ownership of 5/6 kils of land has been produced. The Court below held that no independent witness has been examined by the complainant to prove the fact that he had given money to accused for sending him abroad. Further, no proof that accused No.4 was working as Travel Agent to send people abroad, has been placed on the file by the complainant.

In view of the above discussion, I find that the findings given by learned JMIC, Rajpura, in no way, can be held as perverse. The findings have been given while appreciating the evidence in right perspective. The impugned judgment dated 22.07.2015 passed by learned JMIC, Rajpura, is correct, as per law and evidence and does not require any interference from this Court.

Keeping in view above facts and circumstances, I find that no ground is made out to grant permission for leave to appeal and therefore, the present application stands dismissed.

April 04, 2016
Vgulati

(INDERJIT SINGH)
JUDGE