IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-30-MA of 2013(O&M)
Date of decision:-19.7.2017

Khazan Singh

...Applicant/Appellant

Versus

Davinder Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Vivek Thakur, Advocate
for the applicant.

Mr.Anoop Verma, Advocate
for the respondent.

****

H.S. MADAAN, J.

Applicant – Khajan Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent – Davinder Singh challenging the impugned judgment dated 21.7.2012 passed by learned Additional Sessions Judge, Sangrur vide which he had set aside the judgment dated 10.12.2011 passed by Judicial Magistrate Ist Class, Malerkotla convicting accused Devinder Singh for offence under Section 420 IPC and sentencing him to undergo rigorous imprisonment for three years and to pay a fine of Rs.2,000/- and in default thereof, to further undergo simple imprisonment for two months.

The first Appellate Court, while setting aside the judgment passed by the trial Magistrate had acquitted the accused of the charge framed against him and rather observed that the complainant had made a false statement in the Court and had falsely dragged the accused into a criminal case, as such trial Court would conduct an inquiry under Section 340 Cr.P.C. for initiating proceedings against the complainant for getting false case registered and making false statement in the Court.

The applicant prays that such judgment passed by the First Appellate Court of learned Additional Sessions Judge, Sangrur be set aside by way of acceptance of the appeal and accused be convicted and sentenced in accordance with law.

Briefly stated, facts of the case are that complainant Khazan Singh son of Kesar Singh resident of village Shahpur, District Ludhiana had submitted a written complaint dated 30.1.2006 to Senior Superintendent of Police, Sangrur on the allegations that Devinder Singh accused, representing himself to be travel agent had received a sum of Rs.2,61,000/- from him on the pretext of sending him abroad in presence of Pritam son of Gurdayal, resident of village Shahpur. Subsequently as admitted by the accused, he had paid further sum of Rs.39,000/- to him after selling his house and collecting the money from other sources but the accused did not keep his compromise of sending him abroad thereby cheating him and committing various other offences, therefore action be taken against him. On the basis of that complaint, an inquiry into the matter was conducted by the Economic Offences Wing, Sangrur. Formal FIR was registered. The accused was arrested in the case on 7.4.2006. After completion of investigation, challan against him was filed in the Court of Judicial Magistrate Ist Class, Malerkotla, where the accused faced trial.

During the course of its evidence, the prosecution had examined twelve witnesses, namely, PW1 Karam Chand, PW2 Swarn Singh, PW3 Pritam Singh, PW4 Didar Singh, PW5 Budh Singh, PW6 Khazan Singh, PW7 Gurbhaksh Singh, PW8 Dhian Singh, PW9 Daler Singh, PW10 HC Major Singh, PW11 Tara Singh and PW12 Gurjant Singh.

Statement of accused was recorded under Section 313 Cr.P.C. in which the accused while denying the incriminating circumstances appearing against him submitted that he was innocent and had been falsely involved in the case. However, he did not lead any evidence in defence.

The trial Court formulated following point for determination:

> *"Whether in the year 2002, in the area of village Bhagiwal, accused dishonestly induced the complainant to deliver him Rs.3,00,000/- for sending him abroad but he neither send him abroad nor returned the above amount and committed offence under Section 420 IPC?"*

After hearing arguments, the learned trial Court found that prosecution had proved its case against accused beyond a shadow of reasonable doubt, as such accused was convicted and sentenced as mentioned supra.

Feeling aggrieved, the accused had filed appeal in the Court of Sessions which was accepted by the Court of learned Additional Sessions Judge, Sangrur as detailed above and he was acquitted of the charge framed against him.

Now the complainant is before this Court by way of filing the present application.

I have heard the learned counsel for the parties besides going through the records and I find that there is no merit in the application seeking permission for leave to appeal.

Firstly the limitation for filing such an application is 60 days from the date when the order of acquittal was passed. This application has been filed beyond period of limitation. An application under Section 5 of the Limitation Act for condonation of delay of 95 days has been filed for the reason that he was not aware of passing of the order and he came to know about it only on 1.11.2012, thereafter collected the record and filed the appeal after obtaining certified copy of order dated 21.7.2012. In that way, his delay was not intentional.

As far as application under Section 5 of the Limitation Act seeking condonation of delay of 95 days in filing the appeal is concerned, the same clearly lacks merit. The complainant was obviously negligent in pursuing the matter properly and there is no justification for condoning the delay for the reason that according to the applicant he did not come to know about the order passed by First Appellate Court and got copy of the order later on and then filed the appeal. The persons having such type of casual attitude are not entitled to get indulgence of the Court, therefore, the application is clearly time barred.

Secondly the First Appellate Court by well reasoned judgment has concluded that the prosecution had failed to prove its charge against the accused. The First Appellate Court in para No.11 of the judgment referring to cross-examination of PW6 Khazan Singh has observed that dispute is only with regard to property and earnest money involved in the agreement to sell and he had no other dispute with appellant/accused. The First Appellate Court has observed that from the testimony of complainant itself, it is clear that complainant and accused had entered into an agreement to sell the house of accused to the complainant and an amount of Rs.2,61,000/- was paid by complainant to the accused as earnest money and when the accused failed to execute the sale deed, FIR was got registered against him. He has come to the conclusion that the findings recorded by the trial Court convicting the accused for offence under Section 420 IPC are not sustainable.

The judgment passed by the First Appellate Court is certainly not perverse and it does not suffer from any legal infirmity. The trial Court has given detailed reasons for arriving at the conclusion that charge against accused was not sustainable thereby directing his acquittal.

Under the circumstances, the application seeking permission for leave to appeal does not have any merit and is dismissed accordingly.

19.7.2017 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No