

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-996-MA of 2013

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Date of decision:26.4.2017

Parveen Kumar

...Applicant

v.

State of Punjab and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. N.S. Shekhawat, Advocate for the applicant.

Mr. Satnam Singh Gill, Deputy Advocate General, Punjab for
the respondent-State.

Mr. Aman Chaudhary, Advocate for respondents No.2 to 4.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against State of Punjab and others for grant of leave to appeal against the judgment of acquittal dated 14.8.2013 passed by learned Additional Sessions Judge, Patiala, vide which the complaint filed under Sections 306/34 read with Section 120-B IPC at Police Station Lalru, which was committed to the Court of Session, has been dismissed and the accused Shankar Lal, Thakur Dass Chawla and Vas Dev have been acquitted. Aggrieved from this judgment, the present application seeking leave to file appeal has been filed.

Notice of motion was issued in this case.

Mr. Satnam Singh Gill, learned Deputy Advocate General, Punjab has put in appearance on behalf of the respondent-State and Mr. Aman Chaudhary, Advocate has appeared for the respondents No.2 to 4 and contested this application.

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

It has been mainly submitted in the application that the applicants are filing the accompanying criminal appeal against the judgment of acquittal which is likely to succeed as per grounds mentioned therein. It has been stated that the impugned judgment of acquittal is contrary to law and facts and the same is not sustainable in the eyes of law. The judgment of acquittal of the accused-respondents under Section 306 IPC has caused grave miscarriage of justice. It has, therefore, been prayed that this application seeking leave to file appeal be allowed and leave be granted to the applicant to file appeal.

The brief facts as noted down in the judgment dated 14.8.2013 by learned Additional Sessions Judge, Patiala are as under:-

“2. In nutshell, the case of the complainant is that the complainant along with his brothers Pawan Kumar, Harjinder Kumar (now deceased) along with their father and families are living in Lalru and carry on their business separately. The complainant, is carrying on/running Dhaba under the name and style of M/s Aakash Deep Dhaba and Harjinder, now deceased

was carrying on his Boot shop under the name and style of M/s Aakash Deep Shoes. It is further alleged that the real brother of the complainant namely Shyam Sunder Matya along with his family is residing at Ambala City. Accused Shankar Lal Hasija is running a cloth shop in Lalru Mandi which is near the shoes shop of Harjinder Kumar, now deceased. Accused no.2 is related to the wife of accused no.1 while accused no.3 works as commission agent on the shop of accused no.1. All the three accused form a group. Harjinder Kumar, now deceased had no business dealing with accused no. 1 as both were carrying on their different business. It is further alleged that a few days earlier to 1.10.2004, accused no.1 along with relations of accused no.2 and 3 came to the shop of Harjinder Kumar, now deceased at about 9.30 AM to purchase shoes for himself and for the relations-of accused no.2 and 3 and after purchasing the shoes, Harjinder Kumar, now deceased demanded the payment of same on which accused no.1 told him that he will send the money later on but Harjinder Kumar, now deceased insisted that he does not give the shoes on credit and took back shoes from the possession of accused no.1. Upon this, accused no.1 got infuriated and annoyed and started abusing the deceased and told him that he will not allow him to carry on his shoes shop in Lalru Mandi as the deceased has humiliated and disgraced him in the presence of relations of accused no.2 and 3 by

demanding payment and taking back the shoes. He further declared that now he will involve him in theft case of some amount from his shop. Accused no.1 further said that the deceased and his family members will not be able to show their face in the public. It is further alleged that accused no.2 and 3 also came to know that their relations have been defamed and disgraced along with accused no.1 as the price of the shoes purchased by them, was demanded by the deceased and shoes were taken back. Accused no.2 and 3 also threatened the complainant and his brother Shyam Sunder that their relations have been defamed along with accused no.1 on the demand of price of shoes and the deceased had not done a good act and accused no.2 and 3 told Parveen Kumar that now not be peaceful. It is further alleged that on 9.10.2004 accused no.1 openly declared at the shop of Harjinder Kumar that deceased has committed theft of cash from his shop and that he will not spare him at any cost. At that time, accused no.2 and 3 were accompanied by accused no.1. After the said false allegations, the deceased was feeling very much mentally disturbed and depressed as the three accused have great links with the local police and big politicians and therefore apprehended danger to his life and the reputation of his family members. It is further-alleged that till 15.10.2004 Harjinder Kumar was mentally disturbed and depressed due to false allegations levelled against

him by the accused, as a result of which, he committed suicide in the morning of 15.10.2004 in his own house. It is further alleged that the complainant had left for his Dhaba at about 5.00 AM on 15.10.2004 and his brother Harjinder Kumar was vomiting near wash hand basin with a brush in his hand and after 1/2 an hour when the complainant came back from his Dhaba he found that his brother Harjinder Kumar was lying in his drawing room in an unconscious state. It is further alleged that the complainant along with his brother and parents immediately removed him in a car to Civil Hospital, Ambala City but the deceased expired on the way. A suicide letter was recovered from the shirt of Harjinder Kumar which strengthens the story of levelling false allegations of theft against the deceased. The said letter is in the handwriting of Harjinder Kumar, deceased as identified by the complainant and his brother Shyam Sunder. Immediately, a report was lodged in police station Lalru, on the basis of which an FIR no. 104 under Section 306 of IPC was registered against accused no.1. At that time under shock and depression, the complainant and family members of Harjinder Kumar could not narrate the entire facts to the police regarding suicide committed by the deceased. The deceased was subjected to post-mortem examination on 15.10.2004. It is further alleged that the local is in hand and glove with accused persons and as such after having registered

a case under Section 306 of IPC, they have not taken action against the accused. The police got the signatures of complainant and his brother Shyam Sunder on blank papers and thereafter fabricated a false story in order to help the accused. All the accused hatched a criminal conspiracy against the deceased by making false allegations. Hence the complaint.”

The learned Additional Sessions Judge, Patiala, finding prima facie case against the accused framed the charge under Section 306 IPC, to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Dr. Surinder Kaur, who mainly deposed regarding post-mortem examination conducted on the body of the deceased Harjinder Kumar and she gave the cause of death “due to consumption of Aluminium Phosphide”. The prosecution further examined PW-2 Dr. Seema Sharma, who deposed that she has received a suicide note of two pages, one torn envelop bearing questioned writing and signatures in Hindi and one original specimen signature card of OBC Bank and two photostat documents bearing admitted signatures of Harjinder Kumar in Hindi. This letter dated 4.11.2004 bears the signatures of Rupinder Kumar Inspector of Police Station Lalru and gave the opinion on questioned signatures, writing and standard signatures of Harjinder Kumar and gave report regarding the signatures of Harjinder Kumar on suicide note etc. PW-3 Shyam Sunder and PW-4 Parveen Kumar deposed as per the version of the prosecution.

The accused in their statements recorded under Section 313

Cr.P.C. denied all the allegations and pleaded their innocence and false implication in the case.

In defence, the accused examined DW-1 DSP Rupinder Kumar Bhardwaj, who deposed that on 15.10.2004, he was posted as SHO/Inspector at Police Station Lalru and on that day he was present at Bus Stand Lalru, then Parveen Kumar along with Ram Narain came to him and Parveen Kumar suffered statement and Ram Narain counter signed the same. He proved the statement Ex.PG/1 and signatures of Parveen Kumar and Ram Narain are Ex.PG/2 and Ex.PG/3. FIR Ex.PW.3/A was registered. Inquest report Ex.PG of the dead body of Harjinder Kumar was prepared and post-mortem was conducted. Report under Section 173 Cr.P.C. Ex.DW.1/B was submitted by him for cancellation of the case against the accused. He further deposed that he mentioned in his report Ex.DW.1/B that proceedings under Section 182 IPC be initiated against the complainant as he had given a false report to the Police and during the investigation his version was found to be false. The enquiry in the above said matter was conducted by the DSP and SP(D) Shri Pritpal Singh Virk. The enquiry report is Ex.DW.1/C. The learned Additional Sessions Judge, Patiala held that there is nothing on record to show that the accused had given instigation to the deceased to commit suicide. The Court also held that even it is not the case of the defence that the deceased Harjinder Kumar has not committed suicide. The Court held that only question arose that co-accused facing the trial had abetted the commission to commit suicide by Harjinder Kumar. The Court held that the prosecution has mainly relied on the suicide

note Ex.P.1. The Court held that even if it is taken as true, then as to whether it amounts to abetment to commit suicide. The prosecution case is that accused went to the shop of Harjinder Kumar and purchased shoes and when the deceased asked for money Shankar Lal told him that he will send the money later on. On this, deceased Harjinder Kumar told them that he does not give shoes on credit and on hearing this, Shankar Lal got annoyed and started abusing the deceased and told him that he will not let him to carry on the business in Lalru Mandi and will also involve him in a theft case and he will not be able to show his face in the public. But the Court from the evidence held that it is an improved version and this version is after thought. Earlier case was registered on the statement of PW Parveen Kumar and statements of Parveen Kumar and Shyam Sunder were recorded by the Police during the course of investigation, but in the statements of aforesaid prosecution witnesses there was no mention that the occurrence took place in their presence. There is also no mention in their statements that the accused started threatening the deceased regularly that they will not allow him to run his business smoothly and will ruin the same. It is also not mentioned in their statements that on 9.10.2004 accused Shankar Lal along with Vas Dev and Thakur Dass Chawla went to the shop of Harjinder Kumar and Shankar Lal levelled false allegations against Harjinder Kumar while standing at the door of the shop of Harjinder Kumar that he has committed theft at his shop and that he is going to involve him in a false case of theft. It is also not mentioned in their statements that accused Thakur Das Chawla and Vas Dev also provoked and supported accused Shankar Lal at that time

and they also made false accusation. The Court further held that even in the criminal complaint it is not mentioned that Shankar Lal threatened deceased Harjinder Kumar that he has good relations with high-ups and officials. It is not mentioned that the occurrence took place in their presence and in the presence of Shyam Lal. It is also not mentioned that the complainant used to halt at the shop of Harjinder Kumar, his brother in routine and used to wish his deceased brother before going to Dhaba which was situated on Ambala-Chandigarh road. It is also not mentioned that thereafter all the accused started threatening the deceased regularly that they will not allow him to run his business smoothly and they will make him and his business ruined. There is also no mention in the complaint that on 9.10.2004 accused Shankar Lal along with accused Vas Dev and Thakur Dass Chawla went to the shop of his brother Harjinder Kumar and Shankar Lal levelled false allegations against his brother while standing at the door of the shop of his brother that he has committed theft at his shop and that he is going to involve his brother in a false case. The Court after discussing the evidence in minute detail held that the witnesses have made material improvements in their statements. The Court further held that from the evidence on record it is made out that there was some dispute between the accused and Harjinder Kumar with regard to payment of shoes purchased by accused Shankar Lal and relatives of accused Thakur Dass Chawla and Vas Dev and that accused Shankar Lal threatened deceased Harjinder Kumar to implicate him in a theft case. The Court held that it does not amount to abetment to commit suicide while relying upon the law. The Court held that there are no

allegations against the accused that he instigated or provoked the deceased to commit suicide or done any act which could be said to have facilitated the commission of suicide by the deceased.

A perusal of the findings given by the learned Additional Sessions Judge shows that these findings have been given as per evidence and law. In no way, the judgment passed by the learned Additional Sessions Judge can be held as perverse or against the evidence or law. Nothing has been pointed out as to which material evidence has been misread by the Court below and as to which material evidence has not been considered by the Court below. The findings given by the learned Additional Sessions Judge have been given after appreciating the evidence in right perspective. The findings are as per evidence and law and do not require any interference from this Court.

In view of the above discussion, I do not find any ground to grant leave to file appeal. Therefore, finding no merit in the criminal miscellaneous application seeking leave to appeal, the same is dismissed.

April 26, 2017.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No