

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.5280 of 2016
and
Criminal Misc. No.A-270-MA of 2016

.....

Date of decision:18.1.2017

Rajinder Singh

...Applicant

v.

Kawaljeet Kaur and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Imran Farooqi, Advocate for Mr. Rajeev K. Kapila,
Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.5280 of 2016:

For the reasons mentioned in the application, the same is allowed and the delay of 40 days in filing the application for leave to appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-270-MA of 2016:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Kawaljeet Kaur and others for grant of leave to appeal against the judgment dated 21.10.2015 passed by learned Additional Sessions Judge, Patiala, vide which the accused have been acquitted of the charges as framed against them.

It has been mainly stated in the application that the accompanying appeal is likely to succeed on the grounds raised therein. It has been stated that there are sufficient grounds to challenge the impugned judgment dated 21.10.2015 passed by learned Additional Sessions Judge, Patiala. It has, therefore, been prayed that leave to appeal may be granted.

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

From the record, I find that Rajinder Singh-complainant filed complaint under Sections 315 and 120-B IPC against Kawaljeet Kaur, Lakhwinder Singh, Sarabjit Kaur and Mohinder Singh. The brief facts of the complaint as mentioned in the judgment dated 21.10.2015 passed by learned Additional Sessions Judge, Patiala, are as under:-

“The complainant Rajinder Singh filed complaint under Sections 315 and 120-B of the Indian Penal Code against the above named accused, wherein, he has alleged that accused No.1 Kawaljeet Kaur is the daughter of accused Nos.2 & 3 namely Lakhwinder Singh and Sarabjit Kaur, whereas, accused No.4 Mohinder Singh is the uncle (Massar) of accused No.1. The marriage of the complainant was solemnized with the accused No.1 Kawaljeet Kaur on 19.11.2008 against the wishes of the other accused. The said marriage was an inter caste love marriage. Both the spouses cohabited together for some time. Fearing threat to their life, the accused No.1 sought protection from the Punjab State Human Rights Commission. A

representation dated 19.11.2008 was also sent to the SSP, Patiala in this regard. The accused No.2 lodged the FIR No.433 dated 21.11.2003, under Sections 363, 366-A of the IPC at P.S. Tripuri, Patiala against the complainant. The complainant and accused No.1 Kawaljeet Kaur filed a joint petition for quashing of the above said FIR before the Hon'ble High Court. In the said petition, the accused No.1 Kawaljeet Kaur gave statement in the Court that she would go along with the complainant. However, the accused No.1 was kidnapped by the accused Nos.2 to 4 and she was forced to change her statement. Upon subsequent statement of the accused No.1 Kawaljeet Kaur given under threat, the police added the offence punishable under Section 376 read with 120-B of the IPC against the complainant. The accused No.1 Kawaljeet Kaur was pregnant at the time when she was kidnapped by the accused. The accused No.2 filed an application before the Ld. JMIC, Patiala under Section 3(ii) of Medical Termination of Pregnancy Act, 1971 praying for termination of the pregnancy of Kawaljeet Kaur and the said application was dismissed on 21.05.2009. It has been further alleged by the complainant that the accused in connivance with each other got the child in the womb of accused No.1 Kawaljeet Kaur aborted. The matter was reported to the police, but, the police did not take any action against the accused persons. Thereafter, the complainant

moved Criminal Misc. No.M-28701 of 2009 before the Hon'ble High Court in which the accused No.1 Kawaljeet Kaur gave a false statement that the miscarriage took place due to sudden fall in the toilet. The said Criminal Misc. was disposed of by the Hon'ble High Court, vide order dated 25.03.2010. However, the complainant was given opportunity to avail any other remedy as per law. Hence, the complainant filed the present complaint against the above named accused persons.”

The accused were charge-sheeted for the offence under Section 315 read with Section 120-B IPC. The complainant examined himself as PW-1 and Kishan Chand, Lab. Technician as PW-2 and thereafter, the prosecution evidence was closed. The accused in his statement recorded under Section 313 Cr.P.C. pleaded their innocence but they did not produce any defence evidence.

The learned Additional Sessions Judge, Patiala, after discussing the evidence acquitted the accused. Aggrieved against this judgment the present appeal along with application seeking leave to file appeal has been filed.

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

From the record, I find that the main allegation in the present case by the complainant is that Kawaljeet Kaur was pregnant and Lakhwinder Singh (respondent No.2) father of Kawaljeet Kaur also filed an application before learned Judicial Magistrate Ist Class for termination of

pregnancy which was dismissed. It is also the case of the complainant that he moved Criminal Misc. No.M-28701 of 2009 before this Court in which Kawaljeet Kaur gave a false statement that miscarriage took place due to sudden fall in the toilet and that petition was disposed of by this Court. The complainant was given liberty to avail any other liberty as per law. To support the case of the complainant, the complainant appeared into the witness box and deposed as per the averments of the complaint. PW-2 Kishan Chand, Lab Technician mainly deposed regarding the test report in which Kawaljeet Kaur was found to be pregnant. Except this, there is no evidence on the record to prove that the accused entered into conspiracy or got terminated the pregnancy intentionally.

It is settled law that in criminal case, the prosecution has to prove its case beyond reasonable doubt and if any reasonable doubt exists in the case, the benefit is to be given to the accused. In the present case, there are no particulars in the complaint of the complainant that on which date, month, year and in which hospital and from which doctor the pregnancy was got terminated. No medical evidence to this extent has been proved. Rather, there is no cogent evidence on the record to prove this fact. Secondly, it is itself in the complaint that before this High Court in another proceeding Kawaljeet Kaur had made a statement that she fell into the toilet due to which this termination of pregnancy took place. There is nothing at this stage to show that the statement as given by Kawaljeet Kaur was false.

Learned Additional Sessions Judge, Patiala, while discussing the evidence in right perspective has given the findings which are correct as

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per evidence and law and do not require any interference from this Court. Further more, 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. Rather, the evidence has been appreciated in right perspective. There is nothing on the record to show that the judgment passed by the learned Additional Sessions Judge is perverse or against the evidence. Nothing has been pointed out as to which findings given by the Court below are illegal or against the law.

Therefore, from the above, I find that the judgment passed by the learned trial Court is correct as per evidence and law and does not require any interference from this Court.

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

January 18, 2017.

(Inderjit Singh)
Judge

hsp

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