

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.25898 of 2014 and
Cr. Misc. No.A-1342-MA of 2014 (O&M)

.....

Date of decision:16.1.2017

Sukhpal Singh

...Applicant

v.

Darshan Singh and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Karan Singh, Advocate for the applicant.

Mr. P.S. Jammu, Advocate for respondent No.1.

Mr. Aditya Sanghi, Advocate for respondent No.2.

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Inderjit Singh, J.

Cr. Misc. No.25898 of 2014:

For the reasons mentioned in the criminal miscellaneous application, the delay of 207 days in filing this application and the accompanying appeal is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.A-1342-MA of 2014:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Darshan Singh and Pardeep Kumar Master-respondents/accused for grant of leave to appeal against the impugned judgment dated 25.10.2013 passed by learned Additional

Sessions Judge, Sirsa, whereby the appeal filed against the impugned judgment and order dated 5.1.2012 passed by learned Sub Divisional Judicial Magistrate, Dabwali, convicting the accused-respondents for the offences under Sections 218 and 466 IPC and sentencing them to undergo rigorous imprisonment for two years and to pay a fine of ₹500/- and in default of payment of fine to undergo further imprisonment for six months for the offence under Section 218 IPC and to undergo rigorous imprisonment for three years and to pay a fine of ₹2,000/- and in default of payment of fine to undergo further imprisonment for six months for the offence under Section 466 IPC, has been allowed and the accused-respondents have been acquitted of the charges as framed against them.

It has been mainly stated in the application that the learned Additional Sessions Judge, Sirsa, vide judgment dated 25.10.2013 has acquitted the respondents/accused of charges as framed against them. It has been stated that the accompanying appeal is likely to succeed on the grounds taken therein. It has been stated that if the present application is not entertained, then the applicant/appellant would suffer irreparable loss, which could not be compensated later on. It has been prayed that leave to file appeal may be granted.

Notice of motion was issued in this case.

Mr. P.S. Jammu, learned Advocate has appeared for respondent No.1 and Mr. Aditya Sanghi, learned Advocate has appeared for respondent No.2 and contested this application.

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

From the record, I find that Sukhpal Singh-complainant/petitioner filed complaint against Darshan Singh and Pardeep Kumar Master for the offences under Sections 420, 467, 471, 218 and 120-B IPC.

The brief facts of the case as noted down by learned Sub Divisional Judicial Magistrate, Dabwali, in the judgment dated 5.1.2012 are as under:-

“The heart and soul of the case of the complainant is that election of Member Panchayat of ward No.5, Gram Panchayat, Ghukanwali had taken place on 09.04.2005 in Ward No.5. Complainant was one of its contestant and other contestant was accused No.1 whereas accused No.2 was the Returning Officer of Gram Panchayat, Ghukanwali, Tehsil Dabwali, District Sirsa. In the said election, complainant secured 114 votes and accused No.1 secured 55 votes whereas six votes were declared invalid, thereby total 169 votes were polled. After counting of votes, complainant was declared successful by the Returning Officer who issued certificate to that effect which bore his signature and that of Hakam Singh, Boor Singh and Pardeep Kumar, Election Officer (Panchayat). The date for oath ceremony of the Member Panchayat, Gram Panchayat, Ghukanwali was fixed as 01.05.2005, on which date when the complainant along with elected candidate i.e. Member Panchayat and Sarpanch

reached the office of B.D.P.O., Odhan, he noticed that the names of other elected members were in the list but his name was missing and in his place, name of accused No.1 was there in the list of elected candidates.

It has been alleged that both accused No.1 and 2 hatched a conspiracy with a sole purpose of causing loss to the complainant and corresponding gain to accused No.2, and he misused his official position by way of carrying out cutting in the record. Thereafter, complainant showed certificate issued by accused No.2 to the higher officials, on which BDPO, Odhan postponed the oath ceremony of the Members Panchayat, Gram Panchayat, Ghukanwali. Complainant moved an application dated 03.05.2005 and on 06.05.2005 to the Deputy Commissioner and District Election Officer (Panchayat) and also moved another application to the Haryana Election Commissioner, Haryana Chandigarh but no action was taken on such applications. Complainant filed a civil suit titled as "Sukhpal Singh Vs. Haryana State & Others", wherein accused No.2 did not file his reply and the Court vide its order dated 16.09.2005 declared complainant to be Member Panchayat of ward No.5, Gram Panchayat Ghukanwali. In these circumstances, accused No.1 and 2 in connivance with each other caused loss to the complainant and corresponding gain to accused No.1 and accused No.2 had also misused his

official position. Hence this complaint.”

The learned Sub Divisional Judicial Magistrate, Dabwali, on the basis of evidence convicted both the accused for the offences under Sections 218 and 466 IPC and sentenced them as mentioned above.

The appeal was filed by both these accused before the Sessions Court and the learned Additional sessions Judge, Sirsa, vide judgment dated 25.10.2013 acquitted the accused. Aggrieved from this judgment, the present criminal miscellaneous application seeking leave to file appeal has been filed by the complainant/applicant.

I have gone through the record and specially the judgment passed by the learned Additional Sessions Judge, Sirsa. First of all, the allegation against Pardeep Kumar is that he was the Returning Officer and had declared the result showing that the complainant had won the election of Gram Panchayat and has also issued the certificate. As per the allegation, when the complainant went to the BDPO office, he says that his name was missing and the name of accused Darshan Singh, who had lost the election was shown as winner. Respondent-Pardeep Kumar was performing his official duties being a public servant as Returning Officer, but no sanction under Section 197 Cr.P.C. has been obtained before filing the complaint. Otherwise also, a perusal of the complaint nowhere shows any mala fide intention on the part of the accused. When the wrong list was prepared, as stated in the complaint, showing accused No.1 Darshan Singh as winning candidate, at that very time, Darshan Singh gave affidavit that he has lost the election and the complainant was the winner. Accused No.1 Darshan

Singh has also not taken oath of the Panch there which shows that there was no mala fide intention on the part of the accused. There may be a clerical mistake in preparing the list. In the criminal case, the complainant has to prove his case beyond a reasonable doubt. Reasonable doubt exists in the prosecution case as there is no cogent evidence to prove the mala fide intention of Darshan Singh and further there is no cogent evidence on record to show connivance of Pardeep Kumar and Darshan Singh and further there being no sanction under Section 197 Cr.P.C. against Pardeep Kumar, who performed his duty as a public servant.

Keeping in view all these facts, I find that the accused have been rightly acquitted by the learned Additional Sessions Judge, Sirsa, in the appeal. In no way, the judgment passed by the learned Additional sessions Judge can be held as perverse or against the evidence. No illegality has been committed by the learned Additional Sessions Judge while acquitting the accused. Further nothing has been pointed out as to which material evidence has been misread by the Court of learned Additional Sessions Judge and nothing has been pointed out as to which material evidence has not been considered by the Court below.

Therefore, from the above discussion, I find that the findings given by the learned Additional Sessions Judge, Sirsa, in his judgment dated 25.10.2013, are correct as per evidence and law and no illegality has been committed which does 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 filed under Section 378 (4) Cr.P.C. seeking leave to appeal, the same is dismissed.

January 16, 2017. **(Inderjit Singh)**
Judge

hsp

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