

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-723-MA-2016
Date of decision:15.12.2017

Smt. Kaushalya

.....Applicant

Versus

Subhash Chand and another

.....Respondents

**CORAM : HON'BLE MR.JUSTICE T.P.S. MANN
HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU**

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

MAHABIR SINGH SINDHU, J.

Complainant Kaushalya has filed the present application under Section 378 (4) Cr.P.C. for grant of special leave to file an appeal against the impugned judgment dated 10.12.2015 passed by learned Judicial Magistrate Ist Class, Mahendergarh vide which both the respondents have been acquitted of the charges punishable under Sections 465, 467, 471 read with Section 120-B of the Indian Penal Code (“IPC”-for short).

Brief facts of the case are that the applicant-complainant had

filed a complaint under Sections 419, 420, 467, 468, 471 & 120-B IPC against five persons including the present respondents by alleging that her husband has expired on 9.6.2003 and respondents are real brothers of his husband. The present respondents conspired with the other three persons (Bahadur, Ramesh Kumar and Hoshiar Singh) and defrauded and caused wrongful loss to the complainant. It is further alleged that respondent No.1-Subhash Chand purchased aluminum pipes worth ₹79,482/- on 9.3.2009 under Government Scheme namely NFSM, but as a matter of fact the forged thumb impressions of her husband was affixed on the relevant papers despite the fact that he had already expired in the year 2003. Thus the present respondents had affixed fake thumb impressions of her husband and being beneficiaries of the said Scheme, caused wrongful loss to the complainant. The purchase was by way of loan under the aforesaid scheme and the benefit of subsidy was also to be granted on purchase of aluminum pipes and accessories. Even the VAT form also contained the thumb impressions of her husband and the subsidy amount of ₹12,000/- (Rupees Twelve Thousand only) released by way of a demand draft was also misappropriated by the respondents. Although the complainant contacted the authorities including the Agricultural Development Officer, but no fruitful result has been shown, hence that led to filing of the criminal complaint.

In usual course after recording of the preliminary evidence, present respondents were summoned to face trial by learned trial Court for commission of offence punishable under Sections 465/467/471 read with Section 120-B IPC, but complaint against the remaining three

persons was dismissed by learned trial Court vide order dated 21.8.2015 and that order has become final.

Thereafter pre-charge evidence was led and learned trial Court prima facie found that both the respondents have committed offences punishable under Sections 465/467/471 IPC read with Section 120-B IPC and accordingly, they were charged for the same, but they pleaded not guilty and claimed trial. Thereafter, at the time of recording post-charge evidence, a statement was made on behalf of the present respondents that pre-charge evidence be read as post-charge evidence and they did not wish to cross-examine any witness further.

Statements of both the respondents were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against them were put to them, but they denied the same and claimed their false implication.

In their defence, both the respondents brought on record documents Ex.D1 to Ex.D7.

After hearing both sides and perusal of the material available on record, learned trial Court acquitted both the respondents of the charges, hence the present application for seeking special leave to appeal.

It is contended by learned counsel for the applicant that there is sufficient material on record to prove charges against the respondents and the widowed lady is running from pillar to post, but both the respondents have been acquitted by learned trial Court after adopting hyper technical approach.

Heard learned counsel for the applicant and perused the

paper-book.

There is an admitted fact that complainant is sister-in-law (*Bhabhi*) of respondents and her husband has expired in the year 2003. The allegations levelled against them are that they impersonated deceased-Dayanand by forging his thumb impressions to cause wrongful loss to the complainant for their unlawful gain while applying for a loan under NFSM Scheme as well as the benefit of subsidy and the entire exercise was done in the year 2009 i.e. approximately after six years of the death of deceased-Dayanand. It has come on record that an inquiry in the matter was conducted by Dr. Ajay and the same is on record as Ex.CW2/B and the opinion was expressed in that report that both the respondents were not cooperating and as such inference was drawn regarding the involvement of both the respondents.

Para No.10 of the impugned judgment reveals that Deputy Superintendent of Police, Mahendergarh as well as Deputy Commissioner, Narnaul conducted separate inquiries as Ex.D5 and Ex.D4 respectively and both of them have opined that respondents were not involved in fabrication or forgery of any documents and even the application Ex.D6 reveals that subsidy amount has already been deposited with the concerned Department by M/s Surya Irrigation Private Limited, which was designated agency for supplying the equipment/pipes in question. There is nothing on record to prove that what benefit the respondents have received by forging the application or form of agreement for the NFSM Scheme. Even as per the opinion obtained under RTI Act (Ex.D1) the subsidy amount has already been returned

back with the Department by M/s Surya Irrigation Private Limited. Thus it is not proved that present respondents had obtained any benefit on the basis of the alleged thumb impressions of the husband of the applicant/complainant. Charges under Sections 465/467/471 read with Section 120-B IPC are to be proved on the basis of evidence and merely that an inquiry report (Ex.CW2/B) was submitted by Dr. Ajay while observing that respondents did not cooperate in the inquiry will not be sufficient to hold them guilty under the aforesaid charges. Keeping in view the fact that subsidy amount has already been returned back and no benefit has been received by the respondents, the learned trial Court has rightly acquitted both the respondents and there is no justification to take another view in the matter.

In view of the above discussion, this Court is not inclined to accede to the prayer of the applicant. Consequently, the application filed under Section 378(3) Cr.P.C. is dismissed and special leave to appeal is declined.

(T.P.S.MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

15.12.2017

Gaurav Sorot

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| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | No |