

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-234-MA of 2017 (O&M)

Date of decision: 16.08.2017

Sharad Jain

... Applicant

Versus

State of Haryana and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON.
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. S.S. Dinarpur, Advocate for the applicant.

S.S. Saron, J.

The learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, vide her judgment and order dated 12.12.2016 has acquitted respondents No.2 and 3 in a complaint case/protest petition filed by the applicant alleging commission of offences punishable under Sections 323, 324, 326, 427 and 506 read with Section 34 of the Indian Penal Code ('IPC' – for short). Criminal Misc. application No.A-234-MA of 2017 has been filed by Sharad Jain, complainant/applicant, seeking leave to appeal against the said acquittal of respondents No.2 and 3.

Case FIR No.45 dated 31.03.2010 was registered against respondents No.2 and 3 for the offence punishable under Sections 323, 324, 326, 341, 427 and 506 read with Section 34 IPC. After investigation, a cancellation report was submitted by the Police of Police Station Buria, District Yamuna Nagar. Sharad Jain, complainant/applicant, aggrieved against the cancellation report, filed a protest petition alleging commission of offences

punishable under Sections 323, 324, 326, 427 and 506 read with Section 34 IPC. The protest petition that was filed was treated as a complaint.

The learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri after recording preliminary evidence vide order dated 28.03.2012 summoned respondents No.2 and 3 to face trial for the offences under Sections 323, 324, 427, 506 read with Section 34 IPC. The said summoning order, in view of the observations of the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri in the order dated 04.08.2012, was reconsidered and a fresh summoning order was passed on 06.10.2012 calling upon the accused to face trial for the aforesaid offences. The accused appeared and were enlarged on bail on 06.10.2012. The pre-charge evidence was then recorded which was closed on 17.11.2015. The accused were charged on 06.01.2016 for the offences under Sections 323, 324, 326, 427 read with Section 34 IPC. In the after charge evidence, Atul Jain CW5 and the complainant Sharad Jain CW6 were further cross-examined by the learned defence counsel. The complainant closed his evidence after charge on 18.02.2016. In defence Dr. Kamal Sharma, CW1 was further examined. Statements of the accused under Section 313 of the Code of Criminal Procedure ('CrPC' – for short) were recorded in which they pleaded their false application.

The complainant in his protest petition alleged that he was called by the SHO of Police Station Sadar Yamuna Nagar at the Police Station on 29.03.2010 regarding FIR No.39 dated 09.02.2010 for the offences under Sections 406, 420, 506 and 34 IPC lodged against the accused. The complainant went to the Police Station at about 3.45 p.m. and while returning he saw a vehicle coming towards him. The accused got down from the said vehicle and attacked him. According to the version of the complainant, he saw

a green colour Qualis vehicle with No.110 coming from his front side from which the accused had got down.

The learned Judicial Magistrate observed that the complainant had failed to state the number of the vehicle from which the accused got down and attacked him. Besides, he also failed to relate the said registration number of the vehicle with the accused. Moreover, it was the version of the complainant that since the road from Buria chowk to Buria town was in a bad condition, he had diverted his motorcycle from Buria chowk to Amadalpur road from the side of Dera Karnailian. The learned trial Court observed that when it was the version of the complainant that he diverted his motorcycle to another way, then it could not be presumed that the accused knew that the complainant was going to change his way especially when it was not the complainant's case that the accused was following him. The complainant had mentioned in his protest petition that the vehicle in which the accused were sitting had come from his front side. Other discrepancies were also noticed in the case of the complainant, which has resulted in the acquittal of respondents No.2 and 3.

Respondents No.2 and 3, in terms of the judgment and order against which leave to appeal is being prayed for have been acquitted and the cancellation report filed by the police has been accepted.

After filing of the application seeking leave to appeal, CRM No.25030 of 2017 has been filed by Sharad Jain, complainant, seeking permission to prepone the hearing of the application for leave and grant him the liberty to withdraw the same in view of the compromise dated 1.8.2017, which has been entered into between the parties. The compromise Annexure-A1 has been placed on record. In terms of the compromise (Annexure-A1) a mention has been made with respect to case FIR No.39 dated 09.02.2010

registered at Police Station Sadar Yamuna Nagar for the offences under Sections 420, 406, 506 and 34 IPC. It is in the said case that a protest petition was also pending; besides, a mention has been made to the present criminal misc. application and other criminal misc. applications that are pending. According to the compromise (Annexure A1) the accused agreed to pay an amount of Rs.75,00,000/- to Sharad Jain, complainant. Sushma Rani of the first party issued two cheques for an amount of Rs.5,00,000/- each from her bank account with the Punjab National Bank in favour of M/s Jagdamba Timber of which Sharad Jain is the proprietor. Besides, details of other cheques that have been issued in favour of the second party are mentioned. In terms of the agreement, the second party i.e. the complainant Sharad Jain it was agreed would remain bound to get cancelled/withdrawn all the aforesaid cases.

Learned Counsel appearing for the applicant submits that in view of the compromise dated 01.08.2007 (Annexure A1) that has been entered into between the parties, the applicant does not wish to press the application seeking leave to appeal any further.

Notice in the application seeking leave to appeal has not been issued so far the opposite side.

Keeping in view the fact that respondents No.2 and 3 have been acquitted, besides, the fact that the applicant does not wish to pursue the appeal further in view of the compromise dated 01.08.2017 (Annexure A-1), it would be just and expedient to grant liberty to the applicant to withdraw his application seeking leave to appeal.

Accordingly, the CRM No.25030 of 2017 seeking pre-ponement of the hearing of the appeal and for allowing the applicant to withdraw the appeal is allowed and the application (CRM No.A-234-MA of 2017) seeking

leave to appeal is dismissed as withdrawn.

(S.S. Saron)
Judge

(Avneesh Jhingan)
Judge

16.08.2017

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Note:

Whether speaking/reasoned : Yes.

Whether Reportable : No.