

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.1169 of 2018
and
Criminal Misc. No.A-101-MA of 2018

.....

Date of decision:09.10.2018

State of Haryana

...Applicant

v.

Harish Chander

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. B.S. Virk, Advocate for the applicant-State.

.....

Inderjit Singh, J.

Cr. Misc. No.1169 of 2018:

For the reasons mentioned in the criminal miscellaneous application, the delay of 234 days in filing the appeal and application seeking leave to file appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-101-MA of 2018:

The applicant-State has filed this criminal miscellaneous application under Section 378(3) Cr.P.C. against Harish Chander-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 31.1.2017 passed by learned Additional Sessions Judge, Karnal, whereby the accused-respondent has been acquitted of the charges as framed against him in case FIR No.62 dated 21.9.2015 registered for the

offences under Sections 7, 13(1)(d)(ii) and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the PC Act') at Police Station State Vigilance Bureau, Haryana, Rohtak.

It has been mainly stated in the application that the accompanying appeal is being filed against the judgment dated 31.1.2017 passed by learned Additional Sessions Judge, Karnal, which is likely to succeed on the grounds mentioned therein. It has been stated that the impugned judgment of acquittal of the learned Court below is contrary to law and facts and the same is not sustainable in the eyes of law. It has been mentioned that the judgment of acquittal of the accused-respondent has caused grave miscarriage of justice. It has, therefore, been prayed that this application be allowed and leave be granted to the applicant-State to file appeal.

From the record, I find that challan had been presented by Police Station State Vigilance Bureau, Rohtak in FIR No.62 dated 21.9.2015 registered for the offences under Sections 7, 13(1)(d)(ii) and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the PC Act'). The brief facts of the case as noted down by learned Additional Sessions Judge, Karnal, in his judgment dated 31.1.2017 are as under:-

“Brief facts of prosecution case have been to the effect that on 21.09.2015 Balbir Singh (hereinafter called as 'complainant' for the purpose of brevity), presented complaint Ex.P-1 before Inspector, State Vigilance Bureau, Karnal Unit, inter alia alleging therein that he is JBT teacher by profession and is

posted in Government Primary School at Jundla, District Karnal. He had applied for non-refundable advance in the tune of 1,35,000/- from his General Provident Fund Account and necessary sanction, in this regard, was accorded by the office of District Elementary Education Office, Karnal, on 17.09.2015. He alleged that on 17.09.2015 and 18.09.2015 he had tried to give copy of said sanction order to Harish Kumar, Clerk, working in the office of Government Senior Secondary School, Jundla, for preparing the bill for drawing the advance, but accused refused to take the same on the pretext that advance would be drawn only when he would be paid expenses for this work and thus he made demand of ₹1,000/- as illegal gratification. Accused also asked the complainant that if he would not make the payment of bribe then advance would be drawn after 05.10.2015. Complainant apprised his necessity for withdrawing the advance, but accused refused to get drawn the amount without payment of bribe. It was further alleged by complainant that that day he was called by accused with a copy of sanction order and bribe amount of ₹1,000/- with a promise that he would get the bill passed from the treasury and get transferred the amount in the account of complainant that day itself. Complainant stated that he was not intending to give any bribe to accused, but accused was pressurizing him for doing so. Hence, he requested for taking legal action against accused.

On the said complaint, formal proceeding Ex.P-22 was done and FIR Ex.P-8 under Section 7 of the Act was lodged by sending ruqqa through E/ASI Sukhdev Singh. Investigation was undertaken by Inspector Sanjeev Kumar. On application Ex.P-21, moved by Investigating Officer, District Magistrate, Karnal, had appointed Shri Naresh Kumar, BDPO, Karnal, as Duty Magistrate for conducting raid in this case. As per direction of District Magistrate, Harinder Singh, Assistant of the office of BDPO, Karnal, was joined in the investigation as shadow witness. Complainant was introduced with Duty Magistrate. Thereafter, complainant had handed over two currency notes in the denomination of ₹500/- each, which were to be handed over to accused. Duty Magistrate and investigating officer put their initials on both these currency notes and then phenolphthalein powder was applied on the same. Thereafter, same were given to complainant with direction to give the same to accused on his demand. Memo Ex.P-2 with regard to handing over currency notes and personal search of complainant was prepared, which was attested by complainant, shadow witness and Duty Magistrate. Shadow witness Harinder was directed to accompany Balbir Singh complainant and to hear the conversation between complainant and accused and after tainted money is given to accused, to give signal to raiding party. Thereafter, raiding party proceeded

towards Government Senior Secondary School, Jundla. Shadow witness Harinder was sent along with complainant Balbir Singh on his motorcycle whereas other members of raiding party followed the motorcycle of complainant by their Government vehicle. After reaching school, complainant and shadow witness were sent inside the office of school whereas members of other raiding party remained in school premises by hiding themselves from where they could see the shadow witness. Complainant went inside the room where accused was sitting while shadow witness remained standing outside the room in front of room of accused. When as per demand of accused, money was handed over by complainant, shadow witness gave agreed signal to police party and on receipt of same, raiding party immediately went inside the room. Shadow witness pointed towards the accused, who was apprehended. Inspector Sanjeev Kumar and Duty Magistrate Naresh Kumar, BDPO, gave their introduction to accused and directed him to hand over the bribe money, which he had taken from Balbir Singh complainant. Accused took out two currency notes in the denomination of ₹500/- each from the left side pocket of his PATLOON and handed over the same to raiding party, which on checking found to be bearing the initials of investigating officer and Duty Magistrate. The serial numbers of recovered currency notes were also tallied, which were found to be the same

currency notes, which were handed over to complainant for being handed over to accused. The recovered currency notes were put in an envelope and converted into a parcel. Thereafter, one jug of clean water was arranged and solution of sodium carbonate was prepared and in that mixture hands of accused Harish were got washed whereupon colour of solution turned light pink. One nip (glass quarter) was taken out as sample and same was converted into a parcel. Thereafter, a PATLOON was arranged for accused and PATLOON, which accused was wearing, was taken off. A jug of clean water was arranged and again solution of sodium carbonate was prepared and in that solution left pocket of PATLOON of accused was washed and colour of same turned light pink, out of which one nip was separated as sample and same was converted into a parcel. PATLOON of accused was also converted into a parcel. Thereafter, a jug of clean water was arranged and solution of sodium carbonate was prepared and in that solution hands of complainant were got washed upon which its colour turned light pink. One nip was separated as sample and same was converted into a parcel. All the parcels, containing nips, recovered currency notes and PATLOON of accused were sealed with seal 'SVB(H)' and same along with sample seals were taken into possession vide memo Ex.P-3, which was signed by BDPO Naresh Kumar, shadow witness Harinder and

complainant Balbir Singh as witnesses. Seal after use was handed over to Duty Magistrate BDPO Naresh Kumar. The raiding team also took documents Mark-A to Mark-C, relating to GPF advance of complainant, from the drawers of table of accused and after signing the same by investigating officer and Duty Magistrate, same were taken into possession vide memo Ex.P-4, which was signed by same set of witnesses. Site-plan Ex.P-23 of scene of occurrence was prepared. Statements of witnesses under section 161 of Code of Criminal Procedure were recorded. Accused Harish was arrested and was got medico-legally examined and thereafter he was lodged in Police Station Civil Lines, Karnal. On the same day, case property was deposited with Malkhana Mohrar. On next day i.e. 22.09.2015, accused was again medically examined and was produced before learned Ilaqa Magistrate, who sent accused to judicial custody.

On 26.09.2015, scaled site-plan of scene of occurrence was prepared by EASI Vir Shakit Singh, Draftsman.

On 03.10.2015 complainant Balbir Singh was produced before learned Ilaqa Magistrate, who recorded statement of complainant under Section 164 of Cr.P.C., copy of which is Ex.P-24.

On 07.10.2015 statement of shadow witness Harinder was recorded by learned Ilaqa Magistrate. Copy of same is

Ex.P-25.

On 09.10.2015 on application dated 01.10.2015 Ex.P-5, call details of mobile numbers of complainant and accused were taken into possession vide memo Ex.P-7.

On 12.10.2015 copies of transfer order, posting order, joining report and service book of accused Ex.P-11 to Ex.P-18 were taken into possession vide memo Ex.P-19.

The samples of sodium carbonate were sent to the FSL, Madhuban and as per report of FSL, Madhuban Ex.P-20, Phenolphthalein powder and Sodium Carbonate were found in nips (glass quarter) containing Hand Wash and further Phenolphthalein was detected on currency notes of ₹500/- denomination each and grey coloured pants of accused. Sanction to launch prosecution against accused Harish was obtained from Director, Secondary Education Haryana, vide order Ex.P-26. After completion of necessary investigations, broadly, on aforementioned facts, report under section 173 Cr.P.C. was prepared and same was forwarded to Court for trial of accused.”

On finding a *prima facie* case, charges against accused-respondent were framed for the offences under Sections 7 and 13(1)(d) of PC Act, to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined 15 witnesses and closed its evidence.

At the close of prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. and confronted with the evidence of the prosecution but he denied the correctness of the same and pleaded himself as innocent.

In defence, the accused-respondent examined Shashi Bala, Principal, Government Senior Secondary School, Jundla, where the accused was posted as Clerk, and she stated that complainant Balbir Singh was working as JBT teacher in their school in primary section and he remained posted there upto 03.12.2015. During his tenure in their school, his behavior was not good. He usually came to school in drunken condition and, in this regard, separate notices were issued to him. She proved copy of letter sent by Deputy Commissioner, Karnal, to all heads of offices in district regarding promotion of small savings as Ex.D-1; copy of office order, issued by her for opening Recurring Deposit account by staff members through Clerk on very day i.e. 11.08.2015 as Ex.D-2; copy of letter sent by Assistant Returning Officer-cum-Sub Divisional Officer (City), Assandh, for taking action against Balbir Singh, JBT teacher for dereliction of his election duty as Ex.D-4. She also admitted copy of show cause notice served upon complainant Balbir Singh with regard to absent from duty on 12.07.2012 and 13.07.2012 as Ex.D-5 and other documents regarding absence of the complainant etc.

After appreciating the evidence, the accused was acquitted by the learned Additional Sessions Judge, Karnal, vide judgment dated 31.1.2017. Aggrieved from this judgment of acquittal, the present appeal

along with application seeking leave to appeal has been filed by the applicant-State.

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

The learned trial Court after appreciating the evidence in right perspective acquitted the accused by holding that the accused had given a cogent explanation regarding receiving ₹1,000/- from the complainant. In this case regarding demand of bribe, there is only statement of complainant Balbir Singh. The shadow witness had fairly admitted in cross-examination that he did not hear any conversation in between the accused and the complainant regarding payment of ₹1,000/- in question. The explanation given by the accused-respondent is that as Recurring Deposit accounts were to be opened of the staff members as per the letter of the Deputy Commissioner, therefore, he had taken ₹1,000/- from the complainant for opening the RD account. Furthermore, the Court below observed that number of show cause notices were served upon the complainant and the same were conveyed through accused as has been admitted by the complainant during his cross-examination. This shows the motive also for the complainant. Furthermore, the Court below has held that the complainant was of quarrelsome nature. He used to remain entangled with Head Mistress and other administration for non-compliance of the orders and remained under the persistent immediate obsession of intoxicants and made dereliction in his duty from time to time by consuming liquor during his duty hours. Number of show cause notices was served upon

complainant and same were conveyed through accused as has been admitted by complainant. Not only this fact had been admitted by complainant that Deputy Commissioner had got issued instructions for deduction of amount from the salaries of employees. This witness stated that letters Ex.D-1 to Ex.D-13 were served upon him through accused. The complainant also admitted that Deputy Commissioner, Karnal, had given direction for opening of Recurring Deposit accounts in post office. He used to make payment of instalments to accused Harish along with other teachers. The Court below held that thus, possibility cannot be ruled out of making accused as a victim as he used to convey the notices upon complainant and he used to ask teachers as well complainant to get deducted the amount from their salaries for contribution for the funds as target was fixed by Deputy Commissioner for ₹100 crores. In chief-examination, DW-1 has specifically stated that she had given duty of collection of R.D. Account to Harish Kumar, accused in this case and he collected amount of R.D. Account from teachers/staff members. She proved documents Ex.D-1 and Ex.D-2. The Court below held that there is sufficient explanation for retaining amount of ₹1,000/-, which members of raiding party recovered from the accused.

From the record, I find that the findings given by the learned Additional Sessions Judge, Karnal, are as per evidence and law. In no way, the findings can be held as perverse. Nothing has been pointed out as to which material evidence has been misread by the Court below and which material evidence has not been considered by the Court below. In the

present case, the guilt of the accused could not be proved by the prosecution. The prosecution could not prove demand and acceptance of bribe money by the accused-respondent.

Keeping in view the above facts, I find that the prosecution has failed to prove its case beyond a reasonable doubt. Therefore, the accused-respondent has been rightly acquitted by Court below. The findings have been given by the Court below after appreciating the evidence in right and proper perspective which are as per evidence and law and the same do not require any interference from this Court and the same are upheld.

From the above, 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 (3) Cr.P.C. seeking leave to file appeal, the same is dismissed.

October 09, 2018.

(Inderjit Singh)
Judge

hsp

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