

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.1229 of 2018
and
Criminal Misc. No.A-109-MA of 2018

.....

Date of decision:09.10.2018

State of Haryana

...Applicant

v.

Hanuman

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

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

.....

Inderjit Singh, J.

Cr. Misc. No.1229 of 2018:

For the reasons mentioned in the criminal miscellaneous application, the delay of 148 days in filing the appeal and application seeking leave to file appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-109-MA of 2018:

The applicant-State has filed this criminal miscellaneous application under Section 378(3) Cr.P.C. against Hanuman-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 27.4.2017 passed by learned Additional Sessions Judge, Bhiwani, whereby the accused-respondent has been acquitted of the charges as framed against him in case FIR No.27 dated 7.7.2015 registered for the

offences under Sections 7 and 13 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the PC Act') and Sections 170 and 420 IPC at Police Station State Vigilance Bureau, Haryana, Hisar.

It has been mainly stated in the application that the accompanying appeal is being filed against the judgment dated 27.4.2017 passed by learned Additional Sessions Judge, Bhiwani, 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, Gurgaon in FIR No.27 dated 7.7.2015 registered for the offences under Sections 7 and 13 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the PC Act') and Sections 170 and 420 IPC. The brief facts of the case as noted down by learned Additional Sessions Judge, Bhiwani, in his judgment dated 27.4.2017 are as under:-

“Brief facts of the prosecution case are that on 07.07.2015, complainant Parteek Bansal alongwith Ankur had moved an application alleging therein that complainant is an Industrialist and running a factory behind Sector-26 in Kirti Nagar in the

name and style of R.S. Industries and the accused is serving in the electricity department as meter reader. The accused used to ask for ransom money and if the complainant would not pay then he would show the factory closed, for which, he used to give average bill and if he would get corrected the electricity bill from the department, it would take two-three months. The accused had demanded a sum of Rs.1500/- as bribe and in case the complainant will not give him the above-said amount, accused would show the factory closed. The complainant further alleged that he did not want to give the bribe money to the accused and action was requested to be taken against him. Prior to that, at the time of reading, the accused also showed the factory as closed. On the complaint of complainant Parteek Bansal, written intimation was sent to the police station State Vigilance Bureau, Hisar through Constable Vinod Kumar for registration of the case and a raiding party consisting of Inspector Vigilance, ASI Narender Singh, ASI Rohtash, Constable Manoj Kumar, EIASI Pawan Kumar alongwith other police officials was formed and this team with complainant and shadow witness reached in the office of Deputy Commissioner, Bhiwani for seeking permission to conduct the raid and to depute a Duty Magistrate and moved an application in this regard. Shri Sanjay Kumar, Tehsildar, Bhiwani was deputed as Duty Magistrate. Two currency notes of the denomination of

Rs.1,000/- and denomination of Rs.500/- were produced before Inspector Vigilance and Duty Magistrate and they had initialed the said currency notes and also applied phenolphthalein powder on the said currency notes and returned to the complainant after conducting his personal search. Thereafter, phenolphthalein powder and sodium carbonate were mixed in clean water in a clean utensil and the said T solution was sealed in a nip and was taken into possession vide separate recovery memo. Thereafter, the raiding party alongwith Duty Magistrate, complainant and shadow witness reached near R.S. Industries in a Government vehicle. Complainant and shadow witness were sent ahead to the Industry and they stood at some distance. Thereafter, on the hint of shadow witness, raid was conducted in the veranda of R.S. Industries and accused was apprehended. On asking he told his name as Hanuman son of Niranjana, Kumhar, resident of Village Bajina, District Bhiwani. Two currency notes of the denomination of Rs.1000/- and denomination of Rs.500/- were recovered from the right hand of the accused and on checking, the recovered currency notes were found the same which were initialed by Inspector Vigilance and the Duty Magistrate and handed over to the complainant for further handing over to the accused on demand as bribe. The currency notes were taken into possession vide recovery memo after converting those in a sealed parcel.

Hands of the accused were got washed in a clean utensil and the solution of hand-wash was sealed in a parcel and taken into possession vide separate recovery memo. The hand-wash solution as well as demonstration wash were sent to FSL, Madhuban for comparison. Statements of witnesses under section 161 Cr.P.C. were recorded. After completion of usual formalities of the investigation, final report under section 173 of Cr.P.C. was submitted in the Court.”

On finding a *prima facie* case, charges against accused-respondent were framed for the offences under Sections 7 and 13(1)(d)(ii) of PC Act and Section 420 IPC, to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined 14 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 his innocence. The accused had tendered letter dated 20.7.2015 written on behalf of Signal & Systems Company to the Police as Mark-D.1 in his defence.

After appreciating the evidence, the accused was acquitted by the learned Additional Sessions Judge, Bhiwani, vide judgment dated 27.4.2017 by giving him the benefit of doubt. 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.

A perusal of the record shows that the shadow witness had turned hostile. There is no evidence on record to show that the accused-respondent is a public servant. He is stated to be an employee of the Company, who was entrusted with the duty of meter reading, but no evidence had been produced on the record by the prosecution and by the Company also to show that the present accused was authorised to take meter reading of that meter. As the present respondent/accused is not a public servant, therefore, the charges are not made out against the accused. By not producing cogent evidence by the prosecution, a reasonable doubt exists in the prosecution version. The SANDS Company had in fact taken a contract from the Dakshin Haryana Bijli Vitran Nigam Limited ('DHBVNL' – for short), Bhiwani. Even if there was a contract in between them, then this fact itself does not prove that the accused in fact was on the rolls of the SANDS Company and was deputed for the area of the complainant to record the meter reading. All these facts remained unproved. The witnesses of the prosecution could not corroborate their stand with each other. The shadow witness had denied his presence at the place of occurrence as well as at the place where his position has been shown in the site plan. None of the witnesses from the SANDS Company had been produced.

From the record, I find that the findings given by the learned Additional Sessions Judge, Bhiwani, are as per evidence and law. In no way, the findings can be held as perverse. Nothing has been pointed out as

[7]

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 shadow witness had not supported the prosecution version and has turned hostile. Furthermore, from the record it has been proved that the accused is not a public servant.

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