

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.2198 of 2016
and
Criminal Misc. No.A-120-MA of 2016

.....

Date of decision:5.12.2018

State of Haryana

...Applicant

v.

Suresh Kumar

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sharad Yadav, Deputy Advocate General, Haryana for the
applicant-State.

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Inderjit Singh, J.

Cr. Misc. No.2198 of 2016:

For the reasons mentioned in the criminal miscellaneous application, the delay of 105 days in filing the appeal and application seeking leave to file appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-120-MA of 2016:

The applicant-State has filed this criminal miscellaneous application under Section 378(3) Cr.P.C. against Suresh Kumar-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 29.4.2015 passed by learned Additional Sessions Judge (Exclusive Court), Jhajjar, whereby the accused-respondent has been acquitted of the charges as framed against him in case FIR No.03 dated

20.2.2013 registered for the offences under Sections 7 and 13 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the PC Act') at Police Station State Vigilance Bureau, Rohtak.

It has been mainly stated in the application that the accompanying appeal is being filed against the judgment dated 29.4.2015 passed by learned Additional Sessions Judge (Exclusive Court), Jhajjar, 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.03 dated 20.2.2013 registered for offences under Sections 7 and 13 of the PC Act at Police Station State Vigilance Bureau, Rohtak. The brief facts of the case as noted down by learned Additional Sessions Judge (Exclusive Court), Jhajjar, in her judgment dated 29.4.2015 are as under:-

“2. The facts, material and evidence, unfolded during the course of trial, culminating in the commencement, relevant for disposal of the instant case of the prosecution and emanating from the record, in brief, are that on 20.2.2013, Ravinder son of Shri Jai Bhagwan, caste Saini, resident of H.No.213, Tilla

Mohalla, Jhajjar met Hari Parkash, Inspector and moved an application with the allegations that “he was BPL card holder. The Government has issued a scheme “Swaran Jyanti Shehari Rojgar Yojna (here-in-after referred to as SJSRY)” for people coming under the category of below poverty line to obtain loan for starting business on small scale. Pursuant to the Scheme issued by the government to obtain a loan for the purpose of starting small scale business to earn, he (complainant) had submitted a form in Municipal Committee, Jhajjar for obtaining loan of Rs.2,00,000/-. On completion of all legal formalities, loan amount of Rs.80,000/- was sanctioned by Additional Deputy Commissioner, Jhajjar and the amount was received in the Municipal Committee, Jhajjar through Union Bank of India, Jhajjar. Since subsidy was allowed by the government under above mentioned scheme on loan amount, he met Suresh, Clerk, Municipal Committee, Jhajjar in connection with his sanctioned loan and asked Suresh, Clerk to submit his papers for subsidy in the bank, however, Suresh, Clerk refused to forward his papers till his palms were greased. Suresh, Clerk demanded an illegal gratification of Rs.5,000/- for clearance of his documents. Since he did not want to give bribe amount to him, a prayer was thus made to take legal action against concerned official”.

3. On the basis of application Exh.PW3/A of complainant

Ravinder, formal FIR Exh.PW7/A was registered under Section 7 of said Act by Subhash Chander, ASI on receiving ruqua Exh.PW13/A from Hari Parkash, Inspector through Ravinder, Constable Subhash Chander, ASI made endorsement Exh.PW7/B in this regard. Investigation machinery was set into motion by Hari Parkash, Inspector Sankalp, Naib Tehsildar and his Reader Randhir Singh were appointed as Duty Magistrate and Shadow witness on Police request Exh. PW13/B of Hari Parkash, Inspector by the then Additional Deputy Commissioner, Jhajjar vide order Exh.PW13/C. Thereafter, Hari Parkash, Inspector along with his staff and complainant Ravinder came to the office of Sankalp, Naib Tehsildar and Randhir Singh, Reader was called there. They were apprised of all the facts and the complainant was introduced to them. Complainant Ravinder handed over ten currency notes in the denomination of Rs.500/- each to Hari Parkash, Inspector in the presence of Duty Magistrate. A list was prepared which was initialed by Sankalap, Naib Tehsildar and his Reader Randhir Singh. Phenolphthalein powder was applied to the currency notes and thereafter currency notes were handed over to the complainant vide memorandum Exh.PW1/A, after carrying out his personal search, with the instructions to deliver the tainted notes to the accused only on his demand. Randhir Singh, the shadow witness was directed

to remain present at the spot and to give signal to the raiding party after the passing of the bribe money by the complainant to the accused. The complainant and shadow witness were thus sent to the office of the accused after giving suitable instructions and the raiding party headed by Hari Parkash, Inspector followed them.

4. On receiving signal from the shadow witness, the raiding party comprising of Duty Magistrate, Investigating Officer and other police officials reached at the spot. On inquiry, shadow witness disclosed about acceptance of bribe on behalf of the accused by one person, namely, Anit who at the relevant time was standing besides the accused. Investigating Officer made inquiries from Anit who confided that he had accepted money from Ravinder at the instance of accused and disclosed that he himself had come to Municipal Committee in connection with his personal work. Anit handed over the tainted amount to the Investigating Officer on his asking. On checking the currency notes, they were found to be same which had been initialed by Hari Parkash, Inspector and Sankalp, Duty Magistrate. Solution of Sodium Carbonate was prepared and on the washing of hands of Anit and of the complainant as well as right pocket of track suit of Anit, solution turned light pink. All the washes were put in separate nips and were converted into parcels. The recovered currency notes were put in an envelope.

The parcels of nips and currency notes were sealed with the seal of 'SVB(H)' and were taken into possession vide recovery memorandum Exh.PW1/B. The accused was formally arrested at the spot. Rough site plan Exh.PW13/D was prepared of the place of occurrence. On account of recovery of tainted currency notes from the accused, Section 13 of the said act was added. On 21.2.2013, the statement of complainant and witness Anit was got recorded under Section 164 Cr.P.C. from Illaqa Magistrate on police request Exh.PW13/E (original copy of statement is Exh.PW.3/C and Exh.PW.5/A). On the same day, compact disk Exh.P.16 of recording of conversation saved in the mobile phone of complainant was taken into possession vide memorandum Exh.PW6/A. On 26.2.2013, documents, i.e., copy appointment/posting order Exh.PW.11/1, copy of order of additional work Exh.PW11/2 and copy of loan file Exh.PW3/D were obtained from Municipal Committee, Jhajjar vide recovery memorandum Exh.PW11/A. On the same day, call details Exh.PW13/G of mobile No.8059656060 of complainant (running into three pages) were obtained. Case property, i.e. tainted amount and nips was delivered to FSL, Madhuban vide RC No.17 dated 28.2.2013 through Investigating Officer. On 5.3.2013, scaled site plan Exh.PW10/A was prepared by Jai Chand, ASI. Case property, i.e. CDR was delivered to FSL, Madhuban vide RC No.21 dated 19.3.2013 through

Investigating Officer. Statements of the witnesses were recorded by the police under Section 161 Cr.P.C. Other usual steps, necessary for investigation, were also taken. After the completion of investigation, challan report under Section 173 Cr.P.C. was prepared on 21.4.2013 and was filed against the accused by Hari Parkash, Inspector on 10.6.2013 in the Court.”

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

The prosecution in order to prove its case examined 15 witnesses and tendered into evidence report of FSL Exh.PX 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.

The learned Additional Sessions Judge (Exclusive Court), Jhajjar, after appreciating the evidence, acquitted the accused vide judgment dated 29.4.2015. Aggrieved from this judgment of acquittal, the present appeal along with application seeking leave to appeal has been filed by the complainant.

I have heard learned counsel for the applicant-State and have gone through the record specially the judgment passed by the learned Additional Sessions Judge (Exclusive Court), Jhajjar.

A perusal of the record shows that in the present case the complainant PW-3 Ravinder has not supported the prosecution version and has been turned hostile. It has been specifically stated in the trial Court that the accused, who was present in the Court on that day, had never demanded any bribe from him in order to forward his loan file to the concerned Bank. He also deposed that he never gave any bribe to accused Suresh or to any other person on behalf of Suresh in connection with release of his sanctioned loan. This witness was declared hostile at the request of learned Public Prosecutor for the State and during his cross-examination he stated that he never moved any complaint or made any such statement before the Police. In view of the evidence on record, I find that the demand and acceptance of bribe is not proved. Furthermore, the shadow witness has nowhere stated that in his presence demand of bribe was made and it was received by the accused. As per the prosecution version, the money was received by one Anit, who was present with the accused and as per the prosecution version the bribe money has been recovered from Anit, who was present there and not from the accused.

Keeping in view the above facts and circumstances of the case, I find that in view of the evidence produced by the prosecution, it has failed to prove its case beyond a reasonable doubt. The accused has been rightly acquitted by the learned trial Court by appreciating the evidence in right and proper perspective. The findings given by the learned Additional Sessions Judge (Exclusive Court), Jhajjar, are as per evidence and law. In no way, the findings can be held as perverse. Nothing has been pointed out as to which

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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 complainant had not supported the prosecution version and has turned hostile.

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.

December 5, 2018.

(Inderjit Singh)
Judge

hsp

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