

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRM-A-1115-MA-2017(O&M)

Date of decision : 19.01.2018

State of Haryana

... Applicant

Versus

Rakesh @ Chitta & others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Karan Sharma, AAG, Haryana.

AMOL RATTAN SINGH, J.(ORAL)

By this application, the applicant State seeks grant of leave to appeal against the judgment of the learned Additional Sessions Judge, Ambala, dated 21.09.2016, by which the three respondents accused, Rakesh @ Chitta, Sawan and Deepak, have been acquitted of the charges framed against them in respect of offences alleged to have been committed, punishable under Sections 398 and 401 of the IPC and Section 25 of the Arms Act.

The facts noticed in the aforesaid judgment are to the effect that secret information was received that there were young boys who were planning to commit a robbery or dacoity near Kali Paltan bridge, G.T.Road, and were also carrying weapons. ASI Ram Samujh, on the directions of ASI Vijay Kumar, went to Kali Paltan bridge in civil clothes and is stated to have found the respondents armed with weapons, who allegedly were attempting to commit a robbery/dacoity.

In the meanwhile, a police party is also stated to have come to

aforesaid.

Upon appraising the entire evidence, the learned trial Court came to the conclusion that despite there being an office of the Indian Railways as also of the Army near the place where the respondents are stated to have been apprehended, no attempt whatsoever was made to join any witness in the “raid” conducted.

Consequently, the evidence being entirely that of police officials, with not even an attempt to join any independent witness from either the aforesaid offices or from the nearby houses, the story of the prosecution was disbelieved, and the respondents were acquitted of the charges framed against them, giving them the benefit of doubt.

Mr. Sharma, learned State counsel, has submitted that the acquittal of the respondents, simply on account of only police officials having testified, is wholly erroneous as it cannot be said that the said testimonies are not creditworthy.

Having considered the aforesaid argument, a specific query was put to learned State counsel with regard to other criminal cases against the respondents. He has stated to the effect that they were involved in other crimes also.

That being so, in my opinion, the conclusion arrived at by the trial Court is not found to be perverse in any manner.

The learned trial Court has duly noticed the fact that though the testimonies of police officials need not be disbelieved because there is lack of corroboration from independent sources, however, it has gone at pains to see that not even an attempt was made by the prosecution to show that any independent witnesses were even attempted to be joined as such witnesses

at the stated place of occurrence, despite there being residential houses and even Army and Indian Railways offices nearby.

Hence, that Court went on to hold that in such circumstances the testimonies of only police officials (to prove a case of criminal conspiracy against the accused) would need to be scrutinized more carefully.

The trial Court further found that even PW5, who was the Armourer with whom a country made pistol was stated to have been deposited, had testified that he had not test fired it. Hence, the Court came to the conclusion that whether or not the weapon was fit for use or not, also did not stand proved.

On the aforesaid reasoning, as already noticed, the respondents herein were acquitted giving them the benefit of doubt.

I find absolutely no reason to reverse those findings of the trial Court, essentially for the primary reason given by that Court, to the effect that no independent witnesses were even attempted to be joined, even from nearby Government offices. Hence, in my opinion, the respondents admittedly being persons against whom criminal cases were registered, they could possibly be sought to be roped in the conspiracy only to ensure that they remain in custody, which unfortunately is not an uncommon tendency with the police. Of course, it must be stated here that no such presumption can be universally raised by this Court on such a course of action being adopted by the police, but, to yet again repeat, no attempt having been made to join any kind of independent witnesses, either from the public from the nearby houses, nor from the Government offices of the Army and Indian Railways, situated near what is stated to be the place of occurrence, I am in

agreement with the conclusion reached by the trial Court, acquitting the respondents by giving them the benefit of doubt.

Consequently, finding no merit in this application of the State, seeking leave to appeal, it is dismissed.

CRM-17270 of 2017

The accompanying application seeking leave to appeal having been dismissed on merits, the application seeking condonation of delay in filing the application and appeal is actually rendered academic, but is nevertheless dismissed.

(AMOL RATTAN SINGH)
JUDGE

January 19, 2018.
Davinder Kumar/dinesh

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No