

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1985-MA of 2016

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Date of decision:19.12.2018

Deepak Kumar Passi

...Applicant

v.

State of Punjab and another

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Balraj Singh Sidhu, Advocate for the applicant.

Ms. Monika Jalota, Deputy Advocate General, Punjab for the
respondent No.1-State.

Mr. P.P.S. Duggal, Advocate for respondent No.2.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against State of Punjab and Harjinder Singh-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 6.8.2016 passed by learned Judicial Magistrate Ist Class, Ferozepur, whereby in FIR No.14 dated 4.4.2015 registered for the offence under Section 182 IPC at Police Station Kulgarhi, accused-respondent No.2 has been acquitted of the charges as framed against him.

It has been mainly stated in the application that accompanying appeal is being filed against the judgment dated 6.8.2016 passed by learned Judicial Magistrate Ist Class, Ferozepur, which is likely to succeed on the

grounds mentioned therein. It has, therefore, been prayed that this application be allowed and leave be granted to the applicant to file appeal.

A perusal of the record shows that FIR No.14 dated 4.4.2015 was registered under Section 182 IPC at Police Station Kulgarhi against Harjinder Singh-respondent No.2. The brief facts of the case as noted down by the learned Judicial Magistrate Ist Class, Ferozepur, in his impugned judgment dated 6.8.2016 are as under:-

“Brief facts of the case of the complainant are that in the year 2007, when the accused was posted at Govt. Primary School Jhoke Harihar, he made false bills and withdrew the amount and the complainant used to complain about the same. In the year 2010, accused came to school on bullock-cart and tried to take out the furniture belonging to the school. Upon this also, complainant raised hue and cry. Complainant alongwith Beant Singh Sarpanch complained about the above said facts to DEO, who appointed Smt. Naresh Kumari as Inquiry Officer and the said Inquiry Officer gave finding against the accused. Due to above mentioned facts, the accused nurtured grudge against the complainant and started filing false applications to the police. As per the prosecution case, Harjinder Singh moved one application No.728 PC dated 05.03.2010 to Director General of Police, Punjab. Said application was found false and was filed. Again another application bearing No.83 DP dated 6.12.2011 was filed by the accused and on the said application, opinion of

District Attorney was sought, who gave the opinion that the said complaint is relating to the departmental inquiry and hence, no action was taken upon it and the application was filed. Third application bearing No.1508 CPF dated 15.11.2014 was filed by Harjinder Singh and no investigation was done on the said application on the ground that the matter related to the transfer of Harjinder Singh which is departmental proceedings and no police intervention is required. On the strength of these applications, present proceedings under Section 182 IPC were initiated against accused Harjinder Singh.”

The complainant examined himself as PW-1 and the evidence was closed by order.

At the close of complainant's evidence, the statement of the accused was recorded under Section 313 Cr.P.C. and he was confronted with the evidence against him, but he denied the correctness of the same and pleaded himself as innocent and his false implication.

After appreciating the evidence, the accused was acquitted by the learned Judicial Magistrate Ist Class, Ferozepur, vide judgment dated 6.8.2016. Aggrieved from this judgment of acquittal, the present appeal along with application seeking leave to appeal has been filed by the complainant.

Notice of motion was issued in this case.

Ms. Monika Jalota, learned Deputy Advocate General, Punjab has appeared on behalf of respondent No.1-State and Mr. P.P.S. Duggal,

learned Advocate has appeared for respondent No.2 and contested this petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that first of all the offence under Section 182 IPC is a non-cognizable offence and furthermore, in view of the provisions of Section 195 Cr.P.C., no Court shall take cognizance except on the complaint filed by public servant where false complaint etc. has been made. But in the present case, the FIR has been registered by the Police in a non-cognizable case. Secondly, I find that as per the record only one PW Deepak Kumar has been examined but he is not deposing anything regarding filing of the false complaints and as to how these complaints made by the accused are false. Thirdly, in the present case, there are three complaints stated to have been given by the accused. The first complaint was found false in the year 2010. In the second complaint there is no finding that the complaint is false. Rather, the District attorney has given the opinion that it relates to another department and they should look into the allegations. As regards the third complaint, the SP, Ferozepur has found that it is a matter regarding transfer of the applicant and the appropriate authority would be the Education Department to look into the matter. Therefore, there is no finding regarding these two complaints that these are false. As regards the first complaint, it was found to be false on 19.1.2010, but the FIR was registered on 4.4.2015 in this case. Under Section 182 IPC, a maximum sentence is six months. The limitation period is, therefore, one

year. The case is time barred under Section 468 Cr.P.C.

Therefore, from the above discussion, I find that it is a case of acquittal. Therefore, finding no merit in the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal, the same is dismissed.

December 19, 2018.

(Inderjit Singh)
Judge

hsp

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