

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.21722 of 2017
and
Criminal Misc. No.A-1445-MA of 2017

.....

Date of decision:26.9.2018

State of Haryana

...Applicant

v.

Prem Singh

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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

Mr. Gurinder Pal Singh, Advocate for the respondent.

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Inderjit Singh, J.

Cr. Misc. No.21722 of 2017:

For the reasons mentioned in the criminal miscellaneous application, the delay of 124 days in filing the application seeking leave to file appeal and appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-1445-MA of 2017:

The applicant-State has filed this criminal miscellaneous application under Section 378(3) Cr.P.C. against Prem Singh for grant of leave to appeal against the judgment of acquittal dated 5.10.2016 passed by

learned Special Judge, Rewari, in PC Case No.02 of 2015 in FIR No.34 dated 11.08.2015 registered for the offences under Sections 7 and 13 of Prevention of Corruption Act, 1988 (hereinafter referred to as 'the PC Act') at Police Station State Vigilance Bureau, Gurgaon, Haryana.

It has been mainly submitted in the application that the applicant-State is filing the accompanying criminal appeal against the judgment of acquittal which is likely to succeed as per grounds mentioned therein. It has been stated that the impugned judgment of the Court below is contrary to law and facts and the same is not sustainable in the eyes of law. The judgment of acquittal of the accused-respondent under Sections 7 and 13 of the PC Act has caused grave miscarriage of justice. It has, therefore, been prayed that this application seeking leave to file appeal be allowed and leave be granted to the applicant to file appeal.

From the record, I find that challan was presented by the Police Station State Vigilance Bureau, Gurgaon in FIR No.34 dated 11.08.2015 for the offences under Sections 7 and 13 of PC Act against Prem Singh, AFM, Electricity Department. The brief facts of the case as noted down by the learned Special Judge, Rewari, in his judgment dated 5.10.2016 are as under:-

“The facts in brief as per challan under Section 173 Cr.P.C. are that, on 11.08.2015 when Inspector Ramesh Kumar was present in Police Station State Vigilance Bureau at Rewari, Devender Kumar, the complainant appeared and produced an application to the effect that electricity meter No.ADJ 929 in the name of

his brother namely Paras Ram Sharma had got burnt about 10 days ago due to rains. It is alleged that, when he went to complain about the same in the Electricity Department, the complaint was marked to JE. It is further alleged that, thereafter JE along with another person checked the meter and one Prem, the AFM by assuring to install a new meter demanded a sum of Rs.5,000/- as bribe and after accepting the said sum of Rs.5,000/- installed the meter but did not seal and for that demanded another sum of Rs.2,000/-. On the allegations raiding party was constituted and after completing the necessary formalities, Inspector Ramesh Kumar along with Duty Magistrate, officials of the raiding party and shadow witness in Government vehicle reached near the house of complainant i.e. "Sharma Service Station" on Bharawas Road, Rewari. It is further alleged that, on receipt of signal of the shadow witness, accused was apprehended; searched in the presence of Duty Magistrate and on inquiry disclosed his name as Prem Singh son of Tirkha Ram, the AFM. It is further alleged that, during search, a sum of Rs.2,000/- i.e. the bribe money held in right palm was recovered. It is further alleged that, accused was found to have committed offences punishable under Sections 7 and 13 of the Prevention of Corruption Act, 1988. Investigations were taken up. Accused was arrested. After completion of all usual acts of the investigation against

accused, challan was prepared and submitted in the Court for trial of the accused.”

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

In support of its case, the prosecution examined Constable Ravidner Kumar as PW-1, Inspector Surender Singh as PW-2, SI Satya Parkash as PW-3 (wrongly mentioned as PW-2), Deepak Kumar as PW-4 (wrongly mentioned as PW-3), Devender Sharma as PW-5, ASI Dharampal as PW-6, LDC Vipin as PW-7, LDC Gulab Chand as PW-8, Inspector Krishan Kumar as PW-9, ASI Madan Mohan as PW-10, Veer Pal as PW-11, Inspector Ramesh Kumar as PW-12 and thereafter, evidence of prosecution was closed by learned Public Prosecutor for the State.

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

In Defence, the accused examined LDC Daulat Ram as DW-1, SDO Rajender Kumar as DW-2, SDO Raj Singh as DW-3 and closed his evidence.

The learned Special Judge, Rewari, vide the impugned judgment acquitted the accused after appreciating the evidence produced on record. Aggrieved from this judgment, this appeal along with application

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

Notice in the application for delay was issued in this case.

Mr. Gurinder Pal Singh, learned Advocate has appeared on behalf of the respondent and contested this application.

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

From the perusal of the record, I find that the findings have been given by the learned Special Judge, Rewari, as per evidence and law. In no way, the findings can be held as perverse or against the evidence or law. Nothing has been pointed out as to which material evidence has been misread by the Court below and as to which material evidence has not been considered by the Court below. There is nothing to show as to how the findings given by the trial Court are perverse.

The present case is a trap case and the complainant PW-5 Devender Sharma had not supported the prosecution version and turned hostile. He had specifically stated that accused present in the Court had neither demanded nor accepted any bribe from him. He also stated that he had given an application to Vigilance Bureau on the basis of hearsay information given by his brother Paras Ram. PW-11 Veer Pal is the shadow witness. I have read the statement of Veer Pal also. He nowhere stated that he had heard the conversation at the time of raid being shadow witness between the complainant and the accused. He specifically stated in the cross-examination that he did not know about the contents of their conversation as their conversation was not audible to him. He also stated in

cross-examination that the Police had obtained his signatures on number of papers at the State Vigilance Bureau Office Rewari. He had put all his signatures at 5.30 p.m. in the State Vigilance Bureau Office Rewari. He did not know the contents of these documents. He did not know as to who scribed these memos Exs.PC to PF.

Keeping in view the above evidence on the record, I find that the prosecution has failed to prove the demand and acceptance of bribe in the present case. The learned trial Court has further scrutinized the evidence and has found that PW-11 Veer Pal is also not a reliable witness.

Keeping in view the fact that the complainant had turned hostile and has not supported the prosecution version nor has proved the demand and acceptance of the bribe money, further the shadow witness stated that he did not hear the conversation between the complainant and the accused at the time of raid regarding demand and acceptance of money, the prosecution has failed to prove the demand and acceptance of the bribe money. Hence, the respondent-accused has been rightly acquitted by the Court below.

The findings given by the learned Special Judge, Rewari, are correct as per evidence and law. The learned trial Court has appreciated the evidence in right and proper perspective. In no way, these findings can be held as perverse or against the evidence or law.

In view of the above discussion, 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

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to appeal, the same is dismissed.

September 26, 2018.

(Inderjit Singh)
Judge

hsp

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