

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.5247 of 2016
and
Criminal Misc. No.A-260-MA of 2016

.....

Date of decision:20.9.2018

State of Haryana

...Applicant

v.

Jaidev Ahlmad

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

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

.....

Inderjit Singh, J.

Cr. Misc. No.5247 of 2016:

For the reasons mentioned in the criminal miscellaneous application, the delay of 57 days in filing the application seeking leave to file appeal and appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-260-MA of 2016:

The applicant-State has filed this criminal miscellaneous application under Section 378(3) Cr.P.C. against Jaidev Ahlmad for grant of leave to appeal against the judgment of acquittal dated 18.9.2015 passed by learned Special Judge, Rohtak, in Sessions Case No.1 of 2013/2014 in FIR

No.31 dated 25.9.2013 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, Haryana, Rohtak.

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 acquittal 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.

I have heard learned counsel for the applicant and have gone through the record.

From the record, I find that challan was presented by the Police Station State Vigilance Bureau, Haryana, Rohtak in FIR No.31 dated 25.9.2013 for the offences under Sections 7 and 13 of PC Act against Jaidev Ahlmad office of Commissioner, Rohtak Range, Rohtak. The brief facts of the case as noted down by the learned Special Judge, Rohtak in his judgment dated 18.9.2015 are as under:-

“The case of the prosecution is that on 25.9.2013, Sat Narairn was posted as Inspector in State Vigilance Bureau, Kamal. On that day, he was present in his office, when Mahipal son of Molu Ram, Caste Luhar resident of Kalsora District Karnal

moved an application alleging that he was resident of the above said address. He was B.A. and was doing agricultural work. They have five acre land in the name of his father and out of said land, 3 Kanal 10 Marle land has been cut out by the officers of Consolidation Department, regarding which he had filed an appeal under Section 42 before Commissioner, Rohtak Range, Rohtak and the Commissioner had remanded the case to Tehsildar, Indri. It was also alleged in the application that Jaidev, Ahlmad of the Court of Commissioner was demanding bribe money of Rs.30,000/- for supplying copy of the order, for the last many days before from his mobile phone Nos.9416311678 and 9116187441 on his (complainant's) mobile phone No.9466588570 and he did not want to give the said bribe-money and wanted to apprehend him red handed. Upon the said application, Inspector Sat Narain, made his endorsement and got recorded formal FIR. Thereafter, Inspector Sat Narain constituted, raiding party consisting of SI Subhash Chander, EASI Sukhdev Singh, EHC Ramesh Kumar, EHC Prem Parkash and Constable Pardeep and Driver HC Jaibir Singh along with complainant and reached in the office of Deputy Commissioner, Rohtak in Government vehicle bearing Regn. No.HR-03L-6881. SI Sat Narain moved an application to the Deputy Commissioner, Rohtak for deputing Duty Magistrate as well as a shadow witness. On the said

application, Deputy Commissioner, Rohtak appointed Shri Mahabir Parshad Godara, District Social Welfare Officer (DSWO) as Duty Magistrate and instructed Duty Magistrate to appoint his employee as shadow witness. Thereafter, Inspector Sat Narain reached in the office of DSWO along with the raiding party. He shown him the order of the Deputy Commissioner, Rohtak. Shri Mahabir Parshad Godara, DSWO appointed Jaipal, Assistant as shadow witness. Complainant was introduced with them. After verifying the facts and satisfying themselves, they directed the complainant to produce the currency notes and the complainant handed over Rs.30,000/- of the denomination of Rs.1000/- each to the Duty Magistrate. Upon which, Inspector Sat Narain and Duty Magistrate put their initials. Inspector Sat Narain applied phenolphthalein powder on all the currency notes with the help of a brush. Thereafter, Inspector Sat Narain took search of the complainant and instructed the complainant to give the bribe money to Jaidev Ahlmad on his demand. Shadow witness was also instructed to remain with the complainant at some distance and to hear conversation between the complainant and Jaidev Ahlmad and on receipt of bribe money by Jaidev, he will give signal to the raiding party after putting his hand on his head. Inspector Sat Narain prepared seizure memo, jamatalashi and handing over memos, upon which he, Duty Magistrate, shadow

witness and complainant put their signatures. Thereafter, Inspector Sat Narain handed over the said currency notes to the complainant. The hands of all the members of the raiding party were got washed. They all started for the camp office of the Commissioner. After reaching out the camp office, they stopped the vehicle and sent the complainant and shadow witness inside the camp office. After some minutes, the shadow witness gave a signal to them. Then, they apprehended the accused while standing outside the waiting room of the camp office of Commissioner. Inspector Sat Narain and DSWO gave their introduction to the accused. Inspector Sat Narain asked his name and on asking he told his name as Jaidev son of Shri Om Parkash, resident of Brahmanwas District Rohtak. He was further asked to hand over the bribe money to him. He produced Rs.30,000/- after taking out the same from the left front pocket of his shirt. The numbers and initials of the currency notes were tallied with the pre-trap memo. The same were put into an yellow coloured envelope. Jaidev started making shrieks and to avoid any untoward eventuality, they came to the office of S.P. Rohtak along with the accused. After reaching in the office of S.P. Rohtak, solution of sodium carbonate was prepared in a clean jug and the hands of the accused were got washed in the said solution. The colour of the solution turned pink. The said coloured water was put into two

nips. The shirt of the accused was also got removed and the pocket was also washed in the solution which also turned pink. The solution was put into two nips. The shirt of the accused was sealed in a parcel. Thereafter, hands of the complainant were got washed in a fresh solution of sodium carbonate and the colour of the same also turned pink. The solution was also put into two separate nips. All the parcels were separately sealed with the seal of SVB (H). A separate sample seal was also prepared. All these articles were taken into possession vide separate recovery memo, which was attested by all the witnesses. The seal after use was handed over to the DSWO/ Duty Magistrate. Inspector Sat Narain, recorded the statements of the witnesses under Section 161 Cr.P.C. Thereafter, Section 13 of the Act was added and the accused was arrested. Rough site plan was prepared. Call details of the mobile phones of the accused and the complainant were collected. Appointment letter of the accused and the posting orders were also collected. Report of FSL was obtained and then after completion of investigation, report under Section 173 Cr.P.C. was prepared and was forwarded to the Court for trial of the accused.”

The learned Special Judge, Rohtak, 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.

I have heard learned State counsel and have gone through the record.

A perusal of the record shows that the findings have been given by the learned Special Judge, Rohtak, 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.

PW-9 Mahipal is the complainant in the present case. He had turned hostile and has not supported the prosecution version. In his evidence, he had stated that accused Jaidev never demanded any bribe money from him nor he gave bribe money to him nor any amount was recovered from his possession in his presence, which means that the complainant has not proved the demand or acceptance of the bribe money. PW-2 Jaipal, Assistant is the shadow witness. In his statement also, he had stated that he is hard of hearing and has not overheard the conversation held between the complainant and the accused at the time of raid. He had specifically stated that he did not know what had transpired between the complainant and the Investigating Officer. He further deposed that he went to the office room of accused at ground floor in the Commissioner's Office but the complainant was not visible to him and only complainant had come to the room and when complainant Mahipal and accused Jaidev came out he informed the Police by giving the signal. He could not over hear the conversation between the accused and the complainant as he was at a

distance of 15-20 paces and there was intervening rooms of reception and Steno.

Keeping in view the fact that the complainant had turned hostile and has not supported the prosecution version nor supported the demand and acceptance of the bribe money, further the shadow witness was hard of hearing and 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, Rohtak, are correct as per evidence and law. 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 to appeal, the same is dismissed.

September 20, 2018.

(Inderjit Singh)
Judge

hsp

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