

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.5451 of 2018
and
Criminal Misc. No.A-365-MA of 2018

.....

Date of decision:09.10.2018

State of Haryana

...Applicant

v.

Constable Naresh Kumar and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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

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Inderjit Singh, J.

Cr. Misc. No.5451 of 2018:

For the reasons mentioned in the criminal miscellaneous application, the delay of 291 days in filing the appeal and application seeking leave to file appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-365-MA of 2018:

The applicant-State has filed this criminal miscellaneous application under Section 378(3) Cr.P.C. against Constable Naresh Kumar and Kanwar Singh-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 6.12.2016 passed by learned Additional Sessions Judge, Mewat, whereby the accused-respondents have been acquitted of the charges as framed against them in case FIR No.4 dated

14.2.2014 registered for the offences under Sections 7 and 13 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the PC Act') and Sections 201, 211 and 120-B IPC at Police Station State Vigilance Bureau, Gurgaon.

It has been mainly stated in the application that the accompanying appeal is being filed against the judgment dated 6.12.2016 passed by learned Additional Sessions Judge, Mewat, 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-respondents 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, Gurgaon in FIR No.4 dated 14.2.2014 registered for offences under Sections 7 and 13 of the PC Act and Sections 201, 211 and 120-B IPC at Police Station State Vigilance Bureau, Gurgaon. The brief facts of the case as noted down by learned Additional Sessions Judge, Mewat, in his judgment dated 6.12.2016 are as under:-

“Brief facts of the case of the prosecution are that on 14.02.2014, complainant Mohammed Ayub submitted an application addressed to Superintendent of Police to Inspector

Smarth Singh, State Vigilance Bureau, Gurgaon where-in he submitted that in case FIR No.471 dated 13.07.2013 under Sections 379, 188 & 120-B of IPC, tractor of Sakir son of Fajal was taken into possession by the police for committing theft of stones. Sakir was not having good terms with him for the last many days. Sakir got recorded that his truck was involved in the commission of theft of stones. The investigating officer of the said case ASI Kanwar Singh had been visiting his house and threatening him in front his family members. When he talked to ASI Kanwar Singh, then he stated that the matter would be disposed off in case he submitted affidavits of 4-5 persons of the village and he would have to pay Rs.10,000/-. On his request, the matter was settled at Rs.7,000/-. On 13.02.2014, he submitted affidavits of 4-5 persons and paid Rs.3500/-. ASI Kanwar Singh stated that he would come to village Alawalpur on the next day and asked him to pay remaining amount of Rs.3500/- to him and he would also verify the affidavits in the village. The complainant Mohammad Ayub in his application further submitted that he had recorded the conversation between him and ASI Kanwar Singh in his mobile phone and he would submit C.D. thereof later on. ASI Kanwar Singh of police post Jaisinghpur, P.S. Nuh was not doing his work without receiving the bribe money. He did not want to give bribe money to ASI Kanwar Singh. ASI Kanwar Singh

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would implicate him in false case in case he did not give the bribe money. He does not have any personal enmity with ASI Kanwar Singh nor there is any money transaction between him and ASI Kanwar Singh. Complainant Mohammad Ayub requested for taking legal action against ASI Kanwar Singh. On the basis of aforesaid application of the complainant Mohammad Ayub, the instant case was registered. Investigation was initiated. The accused Naresh was arrested on 21.08.2014 and accused Kanwar was arrested on 15.12.2014 but however, they were released on bail. The statements of witnesses under Section 161 Cr.P.C were recorded. After completion of investigation, challan/report under Section 173 Cr.P.C. was filed against the above said accused to stand trial for the offence punishable under Sections 7 & 13 of P.C. Act and 201, 211, 120-B of IPC.”

On finding a *prima facie* case, charges against accused-respondents were framed for the offences under Sections 7 and 13 of PC Act and Sections 201, 211 read with Section 120-B IPC, to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined 13 witnesses and closed its evidence.

At the close of prosecution evidence, the statements of the accused were recorded under Section 313 Cr.P.C. to afford them an opportunity to explain the evidence appearing against them, but they denied

the correctness of the prosecution evidence and pleaded their false implications.

After appreciating the evidence, the accused were acquitted by the learned Additional Sessions Judge, Mewat, vide judgment dated 6.12.2016 by giving them the benefit of doubt. 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.

From the record, I find that the findings given by the learned Additional Sessions Judge, Mewat, are as per evidence and law. In no way, the findings can be held as perverse. Nothing has been pointed out as to which 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. Furthermore, as per prosecution version the accused could not be apprehended at the spot as they had run away from the spot and no bribe money had been given or accepted by the accused nor bribe money has been recovered from them.

Keeping in view the above facts, I find that the prosecution has failed to prove its case beyond a reasonable doubt. Therefore, the accused-respondents have been rightly acquitted by Court below. 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.

October 09, 2018.

(Inderjit Singh)
Judge

hsp

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