

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.6550 of 2018
and
Criminal Misc. No.A-418-MA of 2018

.....

Date of decision:21.11.2018

State of Haryana

...Applicant

v.

Ajmer

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

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

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Inderjit Singh, J.

Cr. Misc. No.6550 of 2018:

For the reasons mentioned in the criminal miscellaneous application, the delay of 202 days in filing the appeal and application seeking leave to file appeal is condoned.

The criminal miscellaneous application stands allowed.

Cr. Misc. No.A-418-MA of 2018:

The applicant-State has filed this criminal miscellaneous application under Section 378(3) Cr.P.C. against Ajmer-respondent seeking grant of leave to file appeal against the impugned judgment of acquittal dated 10.3.2017 passed by learned Additional Sessions Judge, Jind, whereby

the accused-respondent has been acquitted of the charges as framed against him in case FIR No.10 dated 22.2.2014 registered for the offences under Sections 7 and 13 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the PC Act') at Police Station State Vigilance Bureau, Hisar.

It has been mainly stated in the application that the accompanying appeal is being filed against the judgment dated 10.3.2017 passed by learned Additional Sessions Judge, Jind, which is likely to succeed on the grounds mentioned therein. It has been stated that the impugned judgment of acquittal passed by 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-respondent 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, Hisar in FIR No.10 dated 22.2.2014 registered for offences under Sections 7 and 13 of the PC Act at Police Station State Vigilance Bureau, Hisar. The brief facts of the case as noted down by learned Additional Sessions Judge, Jind, in his judgment dated 10.3.2017 are as under:-

“2. Brief facts of the prosecution case are that on 22.2.2014 Inspector Devi Lal was present at SVB Unit, Jind. The complainant Amit Kumar son of Shri Mukesh Kumar, r/o House No.278/5, Hakikat Nagar, Jind along with his maternal

uncle (mama) Deepak son of Rati Ram r/o Patiala Chowk, Jind, came there and moved a written complaint before him regarding demand of bribe of Rs.8000/- by Ajmer Singh Lineman, Electricity Department, Jind, to hush up a case of electricity theft detected by the raiding party to the effect that “he is resident of above said address and is an Auto Rickshaw driver. On 22.2.2014 at about 7.00 AM three persons from Electricity Department came to his house and checked the electricity meter and after writing load etc. they went away. After one hour, Ajmer Singh Lineman, who was the member of team, telephoned on his mobile No.8529037388 from his mobile No.8221901492 and demanded bribe of Rs.8000/- and also asked that JE is also with him, otherwise a case regarding theft of electricity would be lodged against him. They are repeatedly demanding bribe from him through phone and also asked him to bring Rs.8000/- in the electricity office. He did not want to give the bribe money. As per complainant if he did not give bribe money, then they would lodge an FIR against him. Hence he prayed that action be taken against the aforesaid Ajmer Singh Lineman.

3. After receiving the said complaint, rukka was sent through HC Ashok Kumar to P.S. SVB, Hisar for registration of FIR. Thereafter, Inspector Devi Lal along with ASI Krishan Lal, ASI Anil Kumar, ASI Baljit Singh, HC Om Parkash and

HC Baljit as well as complainant Amit and Deepak Kumar reached the office of Deputy Commissioner, Jind in official vehicle bearing registration No.HR-39A-8689 being driven by driver Chhotte Lal seeking permission to conduct the raid and for the appointment of Duty Officer, but it was informed that the Deputy Commissioner was out of station. Then he moved an application before A.D.C., on which Shri Lakhbir Singh Naib Tehsildar was appointed as Duty Magistrate. Thereafter, he called Naib Tehsildar Shri Lakhbir Singh through telephone near office and informed him about the order of Addl. Deputy Commissioner, Jind. Also, the complainant was introduced and Deepak was appointed as shadow witness. Thereafter, solution of sodium carbonate and phenolphthalein powder was prepared after mixing them in the water and it turned pinkish. The said solution was put into quarter glass bottle and was converted into parcel and sealed and was taken into police possession vide recovery memo, which was signed by the witnesses. The complainant produced eight currency notes in the denomination of ₹1000/- each and handed them over to him. Thereafter, he as well as Duty Officer put their initials on the currency notes and then they were smeared with phenolphthalein powder. The complainant was personally searched and thereafter, the aforesaid notes were handed over to the complainant vide separate memos. The complainant was directed to hand over

only those notes to Ajmer on demand and thereafter, to give an indication to the shadow witness Deepak Kumar by giving agreed signal. Also, the shadow witness was directed to give indication to the raiding party after receiving the indication from the complainant. Thereafter, the raiding party along with the complainant and shadow witness proceeded for Hansi Road, Electricity Board, Jind and complainant and the shadow witness were alighted and directed to go to Electricity Board. After sometime, complainant informed the raiding party through telephone that Ajmer Singh asked him to give the bribe money to Setia at Setia Confectionery Shop, Patiala Chowk, Jind. Then on the asking of Inspector Devi Lal, Amit complainant and shadow witness went to Setia Confectionery and Inspector along with raiding party also kept hiding themselves outside the shop.

4. It is further the case of the prosecution that after sometime on getting indication from the shadow witness Deepak the investigating officer along with raiding party entered inside the shop, where a person was present in the shop. After giving his as well as Duty Magistrate's introduction, Inspector Devi Lal asked about the bribe money of Rs.8000/- taken from the complainant. The person told his name as Ashok son of Shri Tej Bhan resident of House No.1049/7, Jawahar Nagar, Patiala Chowk, Jind, owner of Setia

Confectionery and produced Rs.8000/- from his cash box i.e. galla before Duty Magistrate. The notes were tallied with the list and found the same, which were initialed by the investigating officer and Duty Magistrate. Then after taking clean water in a utensil and after mixing Sodium Carbonate in the said water the hands of Ashok Setia were got washed, then the water turned pinkish. The same was put into a glass bottle and taken into police possession vide separate recovery memo after sealing the same with seal SVB(H). Seal after use was handed over to Duty Magistrate Shri Lakhbir Singh, Naib Tehsildar. On enquiry Ashok Setia told that he took the money from Amit on the asking of Ajmer Singh LM. Ashok Setia was made recovery witness. During investigation CD containing conversation of complainant, shadow witness and accused Ajmer Singh LM was taken into police possession. On 14.3.2014 accused Ajmer Singh was arrested. Record regarding checking report and posting order of accused and of official phone No.8221901492 of accused Ajmer was obtained.”

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

In order to prove its case, the prosecution examined Dilbag Singh Draftsman as PW-1, SI Ranbir Singh as PW-2, Yashveer Singh MHC as PW-3, Dinesh Kumar SDC as PW-4, Rajender Singh Dhanda as PW-5,

Shri Mukesh Sharma LDC/Steno as PW-6, ASI Mukhtiar Singh as PW-7, SI Krishan Lal as PW-8, Ashok Kumar as PW-9, Lakhbir Singh Naib Tehsildar as PW-10, ASI Navdeep Kaur as PW-11, Amit as PW-12, ASI Ramesh Chander as PW-13, Deepak as PW-14, Devi Lal Inspector as PW-15 and Shri Dharampal, the then JMIC, Jind as PW-16 and closed its evidence.

At the close of prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C., who denied the correctness of the same and pleaded his innocence and false implication. In defence evidence, the accused examined Himanshu as DW-1.

After appreciating the evidence, the accused was acquitted by the learned Additional Sessions Judge, Jind, vide judgment dated 10.3.2017 by giving him 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.

A perusal of the record shows that firstly, the complainant in this case is PW-12, who deposed in the examination-in-chief as per prosecution version but in cross-examination he has turned hostile and has not supported the prosecution version as argued by the learned State counsel. PW-14 Deepak-shadow witness is related to the complainant. He also turned hostile and has not supported the prosecution version. Furthermore, in the present case, the case of the prosecution is that the money was paid to one Ashok Kumar PW-9 at the instance of the accused.

The accused was not caught red handed in the trap. Rather, ₹8000/- were paid to Ashok Kumar and Ashok Kumar has appeared as PW-9 in this case.

From the record, I find that the findings given by the learned Additional Sessions Judge, Jind, 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.

Keeping in view the above facts, I find that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. A reasonable doubt exists in the present case. Firstly, there is no independent shadow witness in the present case. The person who was joined as shadow witness is related to the complainant. The shadow witness has not supported the prosecution case. The complainant has also not supported the prosecution case in the cross-examination. Further, no recovery has been effected from the accused/respondent. Rather, money was given to one shopkeeper though he says that it was given at the instance of the respondent/accused. Therefore, all these facts create a reasonable doubt in the prosecution version. The respondent/accused has 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

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application filed under Section 378 (3) Cr.P.C. seeking leave to file appeal,
the same is dismissed.

November 21, 2018.

(Inderjit Singh)
Judge

hsp

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