

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.26418 of 2014
and
Criminal Misc. No.A-1355-MA of 2014

.....

Date of decision:3.8.2018

Jaswinder Kumar

...Applicant

v.

Lachhman and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Madan Sandhu, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.26418 of 2014:

For the reasons mentioned in the criminal miscellaneous application, the delay of 42 days in filing the criminal miscellaneous application seeking leave to file appeal is condoned.

The criminal miscellaneous application is allowed.

Cr. Misc. No.A-1355-MA of 2014:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Lachhman, Suman, Tara Chand and Bholi-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 5.5.2014 passed by learned Judicial Magistrate Ist Class, Panchkula, whereby the complaint filed under

Sections 323, 379, 380, 120-B and 506 IPC has been dismissed and the accused-respondents have been acquitted of the charges as framed against them.

It has been mainly stated in the application that the accompanying appeal is being filed against the judgment dated 5.5.2014 passed by learned Judicial Magistrate Ist Class, Panchkula, which is likely to succeed on the grounds mentioned therein. It has been stated that the learned trial Court has erred gravely while acquitting accused/respondents No.1 to 4, without any basis and unjustified reasons and same is against the facts on record. 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 Jaswinder Kumar-complainant filed complaint against Lachhman, Dalip Singh, Suman, Tara Chand and Bholi under Sections 323, 379, 380, 120-B and 506 IPC. The brief facts of the case as noted down by learned Judicial Magistrate Ist Class, Panchkula, in her judgment dated 5.5.2014 are as under:-

“In brief, the story of the complainant is that he is a resident of House No.208 Village Majri, Tehsil and District Panchkula. He previously resided at House No.1232, Village Haripur, Sector-4, Panchkula. On 6.3.2008 when complainant was away, accused numbers 1 and 2 came to his house and stole one gold set, two gold chains, one gold ring and Rs.20,000/- cash from the house of the complainant. When complainant returned, he

was told by his landlord that his younger brother i.e., accused number 1 along with one other person had visited his house in his absence. Thus, complainant came to know that accused had committed theft. When he enquired the matter from the accused, he admitted his guilt and promised to return the gold articles and cash within 2-3 days but he failed to do so. On 10 March, 2008 the accused visited the house of the complainant and manhandled his pregnant wife. They also threatened to kill the complainant, if he approached the local police. The complainant approached the police but they did not take any action against the accused. He came to know that accused number 2 was accompanying accused number 1, when theft took place in his house. On 6.11.2008 accused numbers 1 and 2 admitted their guilt before a Panchayat and promised to return the gold articles and cash to the complainant. Their statements were reduced to writing in presence of witnesses. The accused have failed to return the gold articles and cash to the complainant. Hence, the complaint. ”

The learned Judicial Magistrate Ist Class, Panchkula, after appreciating the evidence acquitted the accused except accused Dalip Singh, who had already been declared as proclaimed person. Aggrieved from this judgment, the appeal along with application seeking leave to file has been filed.

I have heard learned counsel for the applicant and have gone

through the record.

From the record, I find that firstly, in the present case neither there is any MLR nor any doctor had been examined to prove the injuries to the complainant or his wife etc. as alleged in the complaint.

Secondly, a perusal of the complaint itself shows that there are no allegations against accused Smt. Suman, Tara Chand and Smt. Bholi. Further more, there is only statement of complainant CW-1 Jaswinder Kumar, which is not supported by any other witness. As per the complainant, it was told to him by Smt. Shakuntla his landlady that accused No.1 and 2 had committed the theft but Shakuntla has not been examined in the present case. The complainant had not seen the theft. Nothing had been recovered from the accused. There is no corroboration of any type to the statement of the complainant.

Learned counsel for the complainant relied upon only on two documents Exs.C.2 and C.3, which are stated to be the confessions of the accused before the Panchayat. CW-2 Pal Singh deposed regarding these documents Exs.C.2 and C.3 which are on plain paper and are stated to be the confessions of the accused Lachhman and Dalip Singh. In cross-examination CW-2 Pal Singh admitted that he is not signatory to these documents. Therefore, the statement of CW-2 regarding the confessions made by the accused before the Panchayat cannot be relied upon. CW-3 Hardeep was also not present when the documents Exs.C.2 and C.3 were executed. He had simply identified the signatures of his grand-father Harbans Lal, who had already died. He had not deposed regarding the

signatures of Lachhman and Dalip Singh nor qua their confessions before the Panchayat.

The learned trial Court had also considered the fact that none of the members of the Panchayat had been examined to prove the confessions. Further more, as per the complainant the occurrence took place on 2-3 dates, but none of other family members had been examined to support and corroborate the statement of the complainant.

Keeping in view the above discussion, I find that the findings given by the Court below are correct as per evidence and law and, in no way, these 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 which material evidence has not been considered by the Court below. The findings have been given by the Court below after appreciating the evidence in right and proper perspective.

Therefore, from the above discussion, the findings given by the learned trial Court are correct, as per evidence and law and do not require any interference from this Court.

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 (4) Cr.P.C. seeking leave to file appeal, the same is dismissed.

August 3, 2018.

(Inderjit Singh)
Judge

hsp

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