

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM No.A-1376-MA of 2014 (O&M)
Date of decision: August 21, 2018

Krishan Lal

...Applicant

Versus

Jagpal Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Maninder Arora, Advocate
for the applicant.

Mr.L.M.Gulati, Advocate
for the respondents.

INDERJIT SINGH, J.

Applicant-Krishan Lal has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Jagpal Singh and Malwinder Singh, challenging the impugned judgment dated 03.07.2014 passed by learned Judicial Magistrate Ist Class, Rajpura, vide which the accused-respondents were acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is further stated that if application is not allowed by granting the leave, then the applicant would suffer an irreparable loss. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Krishan Lal filed a complaint

against accused Constable Jagpal Singh, Constable Malwinder Singh, DSP

R.K.Sharma and Nirmal Kaur under Sections 499 and 500 IPC. The brief averments of the complaint as noted by down in the judgment passed by learned JMIC, Rajpura, are as under:-

“2. The brief facts of the complaint are that an FIR No.276 dated 07.8.2001 U/s 15 NDPS Act was registered against the complainant at the instance of Constable Jagpal Singh & Malwinder Singh at Police Station City, Rajpura and William Jeji was the Investigating Officer of the said case. After completion of investigation, SHO of PS City, Rajpura instituted a police report U/s 173 Cr.P.C. against complainant and the charge U/s 15 NDPS Act was framed against the complainant on 27-11-2001. During the trial so many witnesses were examined by the prosecution. However, both the eye witness namely constable Jagpal Singh & Constable Malwinder Singh did not appear, despite a number of opportunities given to them by the Hon' ble court, Patiala that statements of both these witnesses Jagpal Singh & Malwinder Singh was very much necessary & they were essential witnesses to be examined in this case to prove the recovery and in the absence of evidence of these witnesses, possibility can't be ruled out that both these officials managed to put plastic bag containing poppy husk on the scooter of the complainant, as Jagpal Singh constable was having animosity with the family of the complainant. It is proved from the evidence that FIR no. 48 was registered on 19-10-2000 against constable Jagpal Singh. Narinder Kumar brother of the complainant was prosecution witness in FIR No.48 dated 19-10-2000, who was helping the complainant. Therefore constable Jagpal Singh was definitely having grudge against the complainant being brother of Narinder Kumar, a prosecution witness in FIR no.48 dated 19-10-2000 and possibility of false implication of the complainant in this case at the instance of Jagpal Singh constable can't be ruled out. She S.P. Bangar, PCS, Special Court, Patiala held in the judgment that in order to succeed in this case, it was required for prosecution to examine Malwinder Singh & Jagpal Singh constable, who originally apprehended the accused/complainant with bag containing Poppy Husk & Only then the evidence of PW-1, PW-3 & PW-4 could be used for purpose of corroboration of evidence of Malwinder Singh & Jagpal Singh constable. One Nirmal Kaur accused no. 4 stood as witness against the complainant, but she herself doing the business of poppy Husk & one FIR no. 269, dated 07-12-2002, U/s 15 NDPS Act was registered against her. At the trial when accused was examined U/s 313 Cr.P.C. wherein he denied the allegations of prosecution and pleaded innocent & false implication in this case. The accused/complainant gave his own version that he has been falsely implicated in the the present case at the instance of Jagpal Singh constable, as he

was got arrested in corruption case by his brother Narinder Kumar. The complainant/accused was called upon to enter into his evidence & he examined Harbans Singh as defence witness, who proved the photocopy of FIR No. 296 dated 07-12-2002 & also examined Gurbhej Singh as defence witness, who proved the photocopy of FIR No. 48 dated 19-10-2000 at police vigilance Bureau, Patiala. Jagpal Singh for last so many years is residing at Rajpura & he is having grudge against the complainant because his brother Narinder Kumar stood prosecution witness against constable Jagpal Singh FIR No. 48 dated 19-10-2000 was registered by Anil Kumar S/o Krishan Lal, R/o ViII. Dhakansu Kallan under corruption act. In view of the above said circumstances, it is crystal clear that constable Jagpal Singh & Malwinder Singh got registered the above said FIR against the complainant due to personal enmity. Due to non-proving of the case, complainant was acquitted from the charges framed against him. As such, constable Jagpal Singh & Malwinder Singh willfully & maliciously giving false information & causing an arrest of the complainant & defamed him in society, as such the accused have committed the offence as stated above. The accused intentionally & deliberately got registered a false FIR No. 276 dated 07-08-2001 against the complainant for taking the revenge of his personal enmity, in which he is acquitted. Nirmal Kaur also stood as witness against the complainant due to personal grudge. By the illegal act of the accused, complainant suffered mental & physical tension and also suffered financial loss during the trial, which can't be compensated in any terms. He also faced society with insulted eyes. the accused have committed the offence under sections 499/500 of Indian penal code and are liable to be punished. Hence the present complaint."

The perusal of the record shows that DSP R.K.Sharma and Nirmal Kaur were discharged from the complaint case and only Constable Jagpal Singh and Constable Malwinder Singh were ordered to be summoned to face trial.

Learned JMIC, Rajpura, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 03.07.2014.

Aggrieved from the above-said judgment, present appeal along

with application for grant of leave to appeal has been filed.

Notice of the application was issued. Learned counsel for the respondents appeared and contested the application.

Lower Court record was requisitioned.

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

The perusal of the findings given by learned Court below shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. At the time of arguments, nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned Court below.

The perusal of the findings shows that Constable Jagpal Singh was not shown in the list of witnesses in the FIR case. Therefore, he was not summoned in the Court as a witness. Constable Malwinder Singh was given up by learned Asstt. Public Prosecutor for the State vide Ex.D3. Similarly, Nirmal Kumar was also given up by learned APP for the State vide Ex.D5. When these witnesses did not appear before the trial Court, rather, have not been summoned before the trial Court in the FIR case to give their version, therefore, without giving them opportunity to explain the facts, in no way, it can be held that they have planted false recovery on present complainant (accused in FIR case), as they were not summoned to appear as a witness in the Court. Therefore, there was no evidence of Constable Jagpal Singh and Constable Malwinder Singh from which it can

Furthermore, learned Judge, Special Court, Patiala, has nowhere categorically gave finding against these persons. The Court in the FIR case has only found doubt in the case that there can be possibility of false implication. On the basis of these findings, in no way, it can be held that Constable Jagpal Singh and Constable Malwinder Singh have defamed the complainant. On the basis of recovery etc. from the accused (present complainant), investigation was conducted and then challan was presented and he was charge-sheeted by the Court, finding prima facie case. If accused Krishan Lal (present complainant) was acquitted in the FIR case by giving benefit of doubt, it does not mean that Constable Jagpal Singh and Constable Malwinder Singh have defamed him or false case has been planted upon the complainant by these officials.

From the perusal of the judgment passed by the Court below, I find that the findings have been given by correctly appreciating the evidence in right perspective and accused-respondents have been rightly acquitted. In no way, the judgment can be held as perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 03.07.2014 passed by learned JMIC, Rajpura, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

August 21, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No