

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.27916 of 2014
and
Criminal Misc. No.A-1454-MA of 2014

.....

Date of decision:14.12.2018

Rachpal Singh

...Applicant

v.

Kulbir Singh and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. R.S. Chauhan, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.27916 of 2014:

For the reasons mentioned in the criminal miscellaneous application, the delay of 72 days in filing the appeal and application seeking leave to appeal is condoned.

The criminal miscellaneous application is allowed.

Cr. Misc. No.A-1454-MA of 2014:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against Kulbir Singh and others-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 11.4.2013 passed by learned Chief Judicial Magistrate, Pathankot, whereby the complaint filed under Sections 452, 342, 345, 506 and 34 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 accompanying appeal is being filed against the judgment dated 11.4.2013 passed by learned Chief Judicial Magistrate, Pathankot, which is likely to succeed on the grounds mentioned therein. It has been stated that the learned trial Court vide impugned judgment has erroneously acquitted the respondents/accused thus the same is not sustainable and liable to be set aside. The learned Court below has misread the evidence, tried to confuse the issue and appears to be extra considerate for the accused. It has, therefore, been prayed that this application be allowed and leave be granted to the applicant to file appeal.

The brief facts of case as noted down by the learned Chief Judicial Magistrate, Pathankot, in his judgment dated 11.4.2013 are as under:-

“Briefly stated, present complaint has been filed by the complainant against the accused alleging that case bearing FIR No.040/04 under Sections 323/324/148/149 IPC was registered against him alongwith Ram Lal and Tarlochan sons of Bui Lal, residents of village Sohawara Khurd, Kothi Prem Singh alongwith others at PS Taragarh/Narot Jaimal Singh and all the offences attributed to the complainant and others were bailable in nature, as such, they approached accused Kulbir Singh, Suhhash Chander and Ashok Kumar for their release on bail but having connived with the opposite side they refused to do so

and continued to harass the complainant and others on one pretext applied for grant of bail before learned Duty Magistrate, Pathankot and after notice to police and hearing APP they were released on bail on 30.09.2004 and after acceptance of bail bonds/surety bonds vide No.7222 dated 30.09.2004 learned Duty Magistrate was pleased to inform the SHO, Narot Jaimal Singh that all the accused in the said case have surrendered before the Court and they have been released on bail and they were directed to appear on 4.10.2004 and the said intimation was received by SHO Taragarh/Narot Jaimal Singh on the same day and accused ASI Kulbir Singh, SHO, ASI Subhash Chander, PS Taragarh and HC Ashok Kumar, PP Sohawara Khurd felt irked with the release of complainant and others on bail in the said case and all the accused in said FIR appeared before learned Ilaqa Magistrate on 04.10.2004 and next date was fixed for 04.10.2001 and next date was fixed for 13.12.2004.

It has further been averred that SHO Kulbir Singh, ASI Subhash Chander and HC Ashok Kumar came on two vehicles alongwith other police personnels to the houses of complainant, Ram Lal and Tarlok Chand on 04.10.2004 at 11.30 PM and after committing raids on their respective houses, arrested them and they disclosed to the accused that they have been released on bail by the Court and have been directed to appear in the

Court on 13.12.2004 and all the three accused refused to listen to the complainant and two other arrested persons and severally (sic. - severely) abused them in the names of mothers and sisters and threatened to kill them and by committing criminal trespass entered their respective houses forcibly and picked them and put them in their vehicles and took them in illegal confinement and brought them to PS Taragarh and detained them in police custody at about midnight and on 5.10.2004 complainant and two other arrested persons through their counsel moved application before learned Duty Magistrate, Pathankot informing the Court that they have been released on bail with due intimation to the police but they have been illegally arrested and put in illegal confinement in violation of the bail orders of the Court and as such, necessary action be taken against the said police officials and learned Duty Magistrate immediately issued notice for 6.10.2004.

It has further been alleged that on 6.10.2004 ASI Kulbir Singh, ASI Subhash Chander alongwith other police personnels by handcuffing complainant, Ram Lal and Tarlok Chand brought them to the Court premises at 12 noon and kept them handcuffed there till 5:00 PM and the said accused intentionally did not produce them before learned Ilaqa Magistrate and then through Sh. JK Chopra, APP and ASI Subhash Chander informed the learned Duty Magistrate, Pathankot that the

arrested persons have been released as per orders of the Court dated 30.09.2004 and w.e.f. 4.10.2004 to 6.10.2004, complainant and others were kept in illegal confinement, harassed, tortured and abused by the accused with the criminal intention having full knowledge of the bail order dated 30.09.2004 and Mr. Rattan Chand, Mr. Hans Raj and Mr. Dalip Singh respectable approached the accused on 5.10.2004 with the request that the arrested persons be released from confinement and they have been released on bail but the accused refused and rather threatened to arrest them also. Hence, the present complaint.”

On finding a *prima facie* case, charges against accused were framed for the offences under Sections 342, 345, 506 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

In order to prove his case, the complainant himself appeared as CW-1 and proved the documents Ex.C.1 to Ex.C.6. The complainant also examined Ram Lal as CW-2 and Tarlok Chand as CW-3. No other evidence was led by the complainant.

At the close of prosecution evidence, the statements of the accused were recorded under Section 313 Cr.P.C. and confronted with the evidence of the complainant, but they denied the correctness of the same and pleaded themselves as innocent. In defence, the accused also examined Raj Kumar as DW-1 and Jasbir Singh as DW-2.

After appreciating the evidence, the accused were acquitted by

the learned Chief Judicial Magistrate, Pathankot, vide judgment dated 11.4.2013. 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 and have gone through the record and the impugned judgment passed by the learned Chief Judicial Magistrate, Pathankot. The findings have been given by the learned trial Court after appreciating the evidence in right perspective. In no way, the findings can be held as perverse or against the evidence. The occurrence in the present case has taken place on 5.10.2004 but the present complaint has been filed on 24.5.2005 after a long delay of about 8 months and there is no cogent explanation regarding the same. Though this point has not been argued before the learned trial Court and the learned trial Court has not decided on the same but from the record it looks that the FIR was already registered against the complainant party and the Police officials have arrested the complainant which means this offence can be stated to have been committed while discharging of official duty. The case of the accused is that no order of the Court has been produced showing that they have been released on bail by the Court. Therefore, in these circumstances, I am of the view that sanction under Section 197 Cr.P.C. was necessary but before filing the complaint no such sanction has been obtained by the complainant. Furthermore, the learned trial Court held that the prosecution/complainant is to prove the case beyond a reasonable doubt. In the present case, the trial Court held that there is nothing to show that as to when they applied for the

certified copy of the impugned order of bail and when it was obtained by the complainant. The only witnesses examined by the Court below are CW-1 complainant, CW-2 Ram Lal and CW-3 Tarlok Chand. CW-4 Sanjay Kumar and CW-5 Constable Pawan Kumar were earlier examined in preliminary evidence and they cannot be read in the evidence as they have not been examined by the complainant after appearance of the accused in the Court and any evidence led by them before appearance of the accused cannot be read against them or after framing of the charges. As there is no evidence to show that they have shown the certified copy of the order to the accused at the time of their arrest, therefore, a reasonable doubt exists in this case and the benefit of doubt goes to the accused. The Court below discussed the evidence on record. Furthermore, the defence of the accused is supported by the DWs who have stated that no such order has been produced by the complainant/accused in FIR case.

The learned trial Court has minutely discussed the evidence. In no way, the findings can be held as perverse or against the evidence. What has happened after the accused were released on 6.10.2004 as per the order of the Court no evidence is there.

As already discussed, a long delay of 8 months has also not been explained by the complainant. In the present case, without sanction the Court cannot take cognizance and furthermore, there is no cogent evidence that the accused were knowing that the complainant has produced any certified copy of the order at the time of their arrest etc., the accused have been rightly acquitted by the Court below.

From the record, I find that the findings given by the learned trial Court are correct as per evidence and law. The evidence has been appreciated in right and proper perspective. 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.

From the perusal of the record, I find that a reasonable doubt exists in the prosecution version and the learned trial Court has rightly acquitted the accused-respondents. 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 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 (4) Cr.P.C. seeking leave to file appeal, the same is dismissed.

December 14, 2018.

(Inderjit Singh)
Judge

hsp

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