

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

CRM No.A-1813-MA of 2015 (O&M)

Date of decision: November 26, 2018

Kawaljit Singh

...Applicant

Versus

Pardeep Bamra

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sandeep Kumar, Advocate
for the applicant.

Mr.L.S.Bhullar, Advocate for
Mr.Pankaj Bhardwaj, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Kawaljit Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Pardeep Bamra respondents, challenging the order dated 28.08.2015 passed by learned Judicial Magistrate Ist Class, Amritsar, whereby accused-respondent was 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, therefore, prayed that leave to appeal be granted.

As per the record, complainant Kawaljit Singh filed a complaint against accused Pardeep Bamra under Section 138 of the Negotiable

28.08.2015 acquitted the accused. Aggrieved from the above-said order, present appeal along with application for grant of leave to appeal has been filed.

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

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

From the perusal of the record, I find that learned JMJC, Amritsar, passed following order:-

“Neither any CW is present despite strictly last opportunity nor cost of Rs.500/- imposed on last hearing is paid. Today the case was fixed for cross-examination of CW1 but today none has come present on behalf of complainant. Perusal of the file shows that notice in the present case was served upon the accused on 5.9.2013. Thereafter the case was fixed for evidence of complainant and examination in chief of CW1 was recorded on 11.7.2014 but thereafter CW1 did not step into witness box for his cross-examination. After the service of notice, the complainant has availed 9 effective opportunities to lead his evidence but failed to conclude the same. Moreover, from the last 4 consecutive hearing complainant is moving exemption application and on the last hearing it was made clear to the counsel for complainant that no further exemption application on behalf of the complainant will be entertained but the complainant did not bother the direction of the Court and today none has come present on behalf of the complainant. It seems that complainant is not interested to pursue the present complaint.

Accused has been coming present on each date. Accused's right of speedy trial as granted by the constitution is being curtailed by the complainant. In view of the last order

there is no justification to further adjourn the case for the same purpose. As such, the evidence of the complainant is closed by order.

As the complainant has not fully examined even a single witness in the after notice evidence, there is no incriminating evidence against the accused. As such, the statement of accused under Section 313 Cr.P.C. is dispensed with.

Heard. In the absence of any evidence of complainant on record, accused is acquitted. His bail bond stands discharged. File be consigned to record room."

The perusal of the order as well as lower Court record shows that charges were framed and notice of accusation was served upon the accused on 05.09.2013 and after that, reasonable opportunities were granted to the complainant to produce and complete the evidence. The complainant was examined-in-chief on 11.07.2014 but thereafter, he did not appear before the Court for cross-examination. Last opportunity was given on the previous date and even, costs of ₹500/- was imposed. On 28.08.2015, neither the complainant nor his counsel appeared nor costs was deposited and in these circumstances, learned trial Court decided the case and there being no evidence on record, acquitted the accused.

There is no explanation nor any cogent document on record to show the reason for absence of the complainant from the proceedings. Though, earlier 3-4 times, the complainant filed application for exemption from personal appearance, which was allowed but no material has been shown nor any cogent ground has been given regarding absence of the complainant and about the fact that why complainant has not appeared for

cross-examination.

Therefore, no illegality has been committed by learned trial Court while acquitting the accused. As already discussed by learned Magistrate that Court is to maintain balance between the complainant and the accused and accused cannot be held to suffer like this as accused has appeared on each and every date whereas complainant did not appear for the last more than one year after his examination-in-chief.

In view of the above discussion, I find that the impugned order dated 28.08.2015 passed by learned JMIC, Amritsar, 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.

November 26, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No