

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.16847 of 2018
and
Criminal Misc. No.A-939-MA of 2018

.....

Date of decision:3.8.2018

Diwan Chand

...Applicant

v.

State of Haryana and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Arjun Lakhanpal, Advocate for the applicant.

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Inderjit Singh, J.

Cr. Misc. No.16847 of 2018:

For the reasons mentioned in the criminal miscellaneous application, the delay of 79 days in filing the criminal miscellaneous application seeking leave to file appeal is condoned.

The criminal miscellaneous application is allowed.

Cr. Misc. No.A-939-MA of 2018:

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against State of Haryana, Rajesh Kumar alias Pahalwan and Harish Kumar alias Rinku-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 7.12.2017 passed by learned Sessions Judge, Kaithal, whereby the

accused-respondents No.2 and 3 have been acquitted of the charges framed against them, by giving them benefit of doubt in case FIR No.155 dated 18.5.2017 registered for the offence under Section 379-B IPC at Police Station, Pundri.

It has been mainly stated in the application that the accompanying appeal is being filed against the judgment dated 7.12.2017 passed by learned Sessions Judge, Kaithal, which is likely to succeed on the grounds mentioned therein. It has been stated that respondents No.2 and 3 have been wrongly acquitted by the learned trial Court. It has also been mentioned that the learned trial Court has not properly appreciated the evidence produced by the prosecution and has, therefore, caused miscarriage of justice. Therefore, it has been prayed that this application be allowed and leave to appeal be granted to the applicant for filing the appeal against the impugned judgment dated 7.12.2017 passed by the learned Sessions Judge, Kaithal.

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

From the record, I find that challan had been presented against accused Rajesh Kumar alias Pahalwan and Harish Kumar alias Rinku in FIR No.155 dated 18.5.2017 registered for the offence under Section 379-B IPC at Police Station, Pundri. The brief facts of the case as noted down by the learned Sessions Judge, Kaithal, in his judgment dated 7.12.2017 are as under:-

“In brief, it is the version of the prosecution that on 18.5.2017,

an information was received from Police Post, Government Hospital, Kaithal, to the effect that Diwan Chand was got injured in a fight/quarrel and he was admitted to Government Hospital, Kaithal; that on receipt of this information, Head Constable Deepak Kumar and C.H.C. Manoj reached Police Post, Government Hospital, Kaithal and obtained written intimation sent by the doctor and M.L.R. dated 18.5.2017, in respect of Diwan Chand, wherein one injury with blunt weapon, which was kept under observation, was mentioned; that injured was not found admitted to Government Hospital, Kaithal; that thereafter, police party reached the house of Diwan Chand at Village Fatehpur, where Diwan Chand got his statement recorded alleging therein as under:

“I am resident of near Chetan Flour Mill, Fatehpur and working as a servant in Shanti Aashram Fatehpur. I am an old person and does not proper eye-sight on account of old age. On 17.5.2017, at about 1300 hours, I was cleaning Shanti Aashram when two young boys came to the Aashram and they put cloth on my mouth and beaten me up and strangulated me resulting in my fall on the ground and they pounced upon me and took out my red purse from my pocket in which ₹4,000/- and my Aadhar Card were there. When I raised alarm, both the boys fled the spot with my purse. On account of weak eye-sight and putting up the cloth on my face, I could not identify

them and thereafter, I went to my home and today I went to Government Hospital, Kaithal, for treatment and after taking treatment, I came to my house, Krishan Prajapat, resident of Village Bhana, now residing on Dhand Road, Fatehpur, came to my house and told me that one of the assailants, who had beaten me up and had stolen my purse, was Rinku son of Mahipal, resident of Fatehpur and he had seen Rinku along with one accomplice running away from Shanti Aashram. Rinku along with one of his assailant had beaten me up and stolen my purse. Action be taken against them and my money and purse should be got returned to me.”

3. On the basis of above statement of complainant, F.I.R. for the commission of an offence punishable under Section 379-B of the Indian Penal Code, 1860, was registered. Head Constable Deepak Kumar started investigation of the case, who prepared site plan of the place of occurrence and recorded statements of witnesses under Section 161 of the Code of Criminal Procedure, 1973. During the investigation, Harish alias Rinku was arrested and his disclosure statement was recorded. In pursuance of his disclosure statement, from his residential house, he got recovered the purse and Aadhar Card of complainant besides ₹400/-. Case property was taken into possession of police. Site plan of the place of recovery was prepared. Accused Rajesh Kumar was arrested. On 19.5.2017,

disclosure statement of accused Rajesh Kumar was recorded and at his instance, ₹600/- were recovered, which were taken into possession of police through seizure memo, site plan of the place of recovery was prepared.”

On presentation of challan, the trial Court finding *prima facie* case against the accused, framed charges for the offences under Sections 379-B and 452 read with Section 34 IPC, to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Krishan Kumar; PW-2 Complainant-Diwan Chand; PW-3 ASI Rishi Pal, who prepared scaled site plan Ex.P.3 of the place of occurrence; PW-4 SI Satyawan, who prepared report under Section 173 (2) Cr.P.C.; PW-5 SI Shamsher Singh, who recorded FIR Ex.P.4 and made endorsement Ex.P.5; PW-6 HC Manoj Kumar, witness of disclosure statement Ex.P.6, seizure memo Ex.P.7 and demarcation memo Ex.P.8; PW-7 Dr. Lakhjit Singh, who prepared medico-legal report Ex.P.7 and sent written intimation Ex.P.10 to Police Post, Government Hospital, Kaithal; PW-8 ASI Ishwar Singh, witness of disclosure statement Ex.P.11, seizure memo Ex.P.12 and demarcation memo Ex.P.13 and PW-9 HC Deepak, Investigating Officer.

At the close of prosecution evidence, the accused were examined under Section 313 Cr.P.C. and confronted with the incriminating evidence against them, but they denied the correctness of the same and pleaded themselves as innocent.

The learned Sessions Judge, Kaithal, acquitted the accused after

appreciating the evidence. Aggrieved from the impugned judgment the appeal along with application seeking leave to file appeal has been filed.

A perusal of the record, especially the judgment shows that PW-1 Krishan Kumar, who informed the complainant that he had seen Harish Kumar alias Rinku running from the site of Shanti Aashram and committed the occurrence, has not supported the prosecution version. In examination-in chief, he simply stated that he did not know anything about this case. PW-2 complainant-Diwan Chand had also stated in the FIR that due to his old age his eye sight is weak and he could not identify the accused. In the Court he had not identified the accused. Further in the present case, it was stated that the recovery was effected from accused Rajesh from underneath a single brick. The trial Court has disbelieved this version that the accused will conceal Rs.400/- underneath one single brick especially when the place did not belong to the accused and was accessible to all. Similarly, recovery of small amount of ₹400/- and ₹600/- is insufficient to convict the accused. Therefore, the findings recorded by the learned trial Court are correct as per evidence and law.

A perusal of the judgment shows that the findings given by the learned Sessions Judge, Kaithal, 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 trial Court after appreciating the evidence in right and proper perspective.

[7]

Therefore, from the above discussion, 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

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