IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-2-MA of 2008 (O&M)
Date of decision: February 27, 2019

M.L.Jain and another

...Applicants

Versus

Darshan Singh Khanna and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Yogesh Putney, Advocate
for the applicants.

None for the respondents.

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INDERJIT SINGH, J.

Applicants have filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Darshan Singh Khanna and Sudesh Sharma (already deleted from the array of parties vide order dated 30.09.2016), challenging the impugned judgment dated 11.07.2007 passed by learned Addl. Sessions Judge (Adhoc), Fast Track Court, Kurukshetra, vide which appeal filed by accused-respondent Darshan Singh Khanna against the judgment of conviction dated 14.01.2004 and order of sentence dated 15.01.2004 passed by learned Judicial Magistrate Ist Class, Kurukshetra, was allowed and he 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, the complainant Ram Saran, Income Tax Officer, Kurukshetra and Income Tax Office, Kurukshetra have filed a

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complaint against accused Darshan Singh Khanna and Sudesh Sharma, Advocate under Sections 277 and 278 of Income Tax Act and Sections 120, 177, 193, 196, 197, 198, 200, 465, 466, 468 and 34 IPC. The brief averments of the complaint as noted down by learned JMIC, Kurukshetra, are as under:-

> "*The brief facts of the complaint are that Shri M.L.Jain Income Tax Officer, Kurukshetra in the official capacity, filed complaint under Sections 277, 278 of Income Tax Act and 120, 177, 193, 196, 197, 198, 200, 465, 466, 468/34 I.P.C. for the assessment year 1987-88 inter-alia alleging that accused No.1 is the assessee as an individual derived income from contract business for the year 1987-88. He filed return declaring an income of Rs.11,840/- on 6.7.1987 through accused No.2 as an Advocate which was duly signed and verified by accused No.1 on 6.7.1987 at Kurukshetra. The return was accompanied by a certificate of deduction of income tax in form No.19(c) issued by the Executive Engineer, Civil Works Division, H.S.E.B. Karnal, according to which gross payments were to be extent of Rs.1,18,371/- and the income was estimated by the assessee at the rate of 10%. The assessment was completed under section 143(1) of the Income Tax Act on 31.8.1987. After kn owing the fact that a refund of Rs.2290/- has been allowed on 3.9.1987, subsequently another return for the same year was filed by accused No.1 on 24.10.1989 declaring his income of Rs.11,840/-. It was also accompanied by certified copy in form No.19(c) issued by the XEN, Civil Works Division, H.S.E.B. Kurukshetra. The statement of income was initiated by Sh.Sudesh Sharma Advocate of accused No.2, who was advocate of accused No.1. Assessment was again completed and refund of Rs.2290/- was issued. Later on, it was found that the assessee has fraudulently claimed refund of Rs.2290/- twice. The department issued show cause notice to both the accused on 8.5.1990 but the same could not be served on the accused in the absence of complete address. However, the letter dated 17.5.1990 was received from the assessee stating that the return for the same assessment year i.e. 1987-88 was filed again because of his mistake in the office of the counsel Shri Sudesh Sharma, accused No.2, who had placed the receipt of the return filed originally in another file as is evident from his letter dated 17.5.1990. Accused No.1 requested the Income Tax Officer to cancel the return filed for the assessment year 1987-88. Shri Sudesh Sharma, Advocate accused No.2 vide his letter dated 17.5.1990 also stated that the return of the assessee claiming the refund of Rs.2290/- was filed through him under the impression that no return for the assessment*

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2019.03.25 16:21
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> *year had been filed by this client previously because the acknowledgment of the return got mixed up and was filed in the record file of another contractor in the same name of Shri Darshan Singh of Kurukshetra. It was further stated that it was done due to mistake in the official record maintained by the Advocate, accused No.2. The contentions were rejected by the authorities and the authorities found that the returns were filed with malafide intention of both the accused to claim refund twice, once on the basis of original certificate and secondly on the basis of certified office copy thereof. It was further asserted that show cause notices were not served because of incomplete address. But two letters dated 17.5.1990 filed by the Advocate as well as by assessee were received by the Department. That this fact also clearly shows that both were conniving in the commission of offence. It was further alleged that the verification made by the accused No.1 under Income Tax Act delivered the accounts which were false which he earlier know or believed to be false and Shri Sudesh Sharma, accused No.2 induced the assessee to make and deliver the accounts relating to the income chargeable to tax which was false and Sh.Sudesh Sharma also know that second refund claimed by the assessee/accused was false and return regarding the same was filed after the first refund was ordered on 3.9.1987. It was further alleged that in this way both the accused in connivance with each other and Shri Sudesh Sharma, Accused No.2 abetted accused No.1 to claim refund twice in a fraudulent manner."*

Accused Darshan Singh Khanna was summoned under Section 277 of the Income Tax Act and 420 IPC, whereas accused Sudesh Sharma, was declared proclaimed offender.

Finding prima facie case, accused Darshan Singh Khanna was charge-sheeted under Section 420 IPC and Section 277 of the Income Tax Act, to which he pleaded not guilty and claimed trial.

In order to prove its case, complainant Ram Saran examined himself as PW-1

Learned JMIC, Kurukshetra, after appreciating the evidence, convicted and sentenced accused-respondent Darshan Singh Khanna to undergo rigorous imprisonment for a period of six months under Section

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277 of the Income Tax Act and also to undergo rigorous imprisonment for a period of nine months under Section 420 IPC and to pay fine of ₹500/- and in default of payment of fine, to undergo rigorous imprisonment for a period of month. Both the sentences were ordered to run concurrently. An appeal was filed by accused-respondent Darshan Singh Khanna and learned Addl. Sessions Judge (Adhoc), Fast Track Court, Kurukshetra, accepted the appeal vide impugned judgment dated 11.07.2007 and acquitted him.

Aggrieved from the judgment dated 11.07.2007 passed by learned Addl. Sessions Judge (Adhoc), Fast Track Court, Kurukshetra, present application seeking to leave to appeal has been filed.

Notice of the application was issued. Earlier, learned counsel for respondent No.1 was appearing but today, none has put in appearance on behalf of respondent No.1.

I have heard learned counsel for the applicant and have gone through the record, especially the judgments passed by the Courts below.

From the perusal of the reasonings given by learned Addl. Sessions Judge (Adhoc), Fast Track Court, Kurukshetra after re-appreciating the evidence, I find that the findings given by learned lower Appellate Court while acquitting the accused-respondent are correct, as per law and evidence. The evidence has been re-appreciated in right perspective. 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. In no way, the findings given by learned Addl. Sessions Judge (Adhoc), Fast Track Court, Kurukshetra, can be held as perverse or against the law.

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2019.03.25 16:21
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The perusal of the record shows that it is not contested that on filing of first income tax return, refund of ₹2290/- has been rightly claimed, which has been refunded by the department. The Advocate of Darshan Singh Khanna assessee, filed second return and again claimed refund of ₹2290/-. Then he filed the return for the third time again asking for refund. These second and third returns have been filed after a long gap and no refund has been given in second or third return. Learned lower Appellate Court has held that as accused Darshan Singh Khanna has not received any amount in excess as refund nor income tax authority has paid/refunded the same, therefore, there is no wrongful gain or any wrongful loss to anybody and accordingly, held that offence under Section 420 IPC is not made out.

Learned Addl. Sessions Judge also held that the amount was meagre amount i.e. only ₹2290/-. Darshan Singh Khanna had turn over of ₹1,18,00/- for the assessment year concerned. The profit is assessed as per rules and then tax at source is deducted while payment of bills submitted by the contractor is made by the department concerned. The Court further held that one fails to understand why accused-appellant would file return after return for same assessment year unless he was misguided by his lawyer. It was further held that there was no concealment by the accused. Wherever amount of ₹2290/- was mentioned, the same voucher number and date was mentioned in the context of deduction. Learned lower Appellate Court also held that even the offence of attempt to commit cheat, is not made out.

At the time of arguments, learned counsel for the applicants argued that Advocate Sudesh Sharma had filed so many returns like this of other persons also and he was earlier declared proclaimed offender. Learned counsel for the applicants further argued that Sudesh Sharma has already been acquitted now by the court and the appeal against acquittal

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before this Court has already been dismissed.

Further, I find that accused Darshan Singh Khanna is a layman and that is why, he has engaged services of the Advocate. If the Advocate has exploited, not only the department but also the clients, it will, in no way, shows the required mensrea in present case for the commission of the offence. Learned Addl. Sessions Judge, has discussued that offence under Section 277 of the Income Tax Act is not made out as under the provision, if the person concerned makes a statement in any verification under the Act or Rules or delivers the account or statement which is false which he knows or believes to be false or when he conceals the income to evade tax, he would be liable for punishment. It has been held that no false statement has been given nor there is any defect in the verification etc.

In view of the above discussion, it is clear that as per the allegations, all this has been done by Sudesh Sharma Advocate and as admitted, at the time of arguments, he has already been acquitted. Keeping in view all these facts, accused Darshan Singh Khanna has been rightly acquitted by learned lower Appellate Court.

In view of the above discussion, I find that the impugned judgment dated 11.07.2007 passed by learned Addl. Sessions Judge (Adhoc), Fast Track Court, Kurukshetra, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out to grant permission for leave to appeal and therefore, the present application stands dismissed.

February 27, 2019 **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **No**

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