

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

CRM No.A-569-MA of 2013 (O&M)

Date of decision: February 26, 2019

Rajinder Aggarwal and another

...Applicants

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.S.Bedi, Sr. Advocate with
Mr.Navdeep Singh, Advocate
for the applicant.

Ms.Monika Jalota, DAG, Punjab
for the respondent-State.

Mr.Bijender Kaushik, Advocate
for respondent No.2.

INDERJIT SINGH, J.

Applicants-Rajinder Aggarwal and Rishi Aggarwal have filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents State of Punjab and Mohinder Goel, challenging the impugned judgment dated 18.04.2013 passed by learned Chief Judicial Magistrate, Ferozepur, vide which the 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, Kalandra was filed by the State against the accused-respondent under Section 182 IPC. The allegations against the accused are that on 21.01.2002, accused Mohinder Goel gave false information to SI/SHO to the effect that on 21.01.2002 at about 6.00 p.m., near Guru Nanak College, Ferozepur Cantt., Rajinder Aggarwal and other persons had wrongfully confined him and caused arm injury on his person, on account of which, he was lying for treatment in Civil Hospital, Mallanwala and prayed for taking action against them.

On presentation of Kalandra, copies of the documents were supplied to the accused. Finding prima facie case, notice of accusation was served upon the accused under Section 182 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 SI Gurcharan Singh and PW-2 SI Sanjeev Kumar. Thereafter, evidence of the prosecution was closed by order.

At the close of prosecution evidence, accused was examined under Section 313 Cr.P.C. He was confronted with the evidence of the complainant and he denied all the incriminating evidence against him and pleaded his false implication and innocence.

Learned CJM, Ferozepur, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 18.04.2013.

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 State counsel as

well as learned counsel for respondent No.2 appeared and contested the

application.

Lower Court record was also requisitioned.

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

The perusal of the findings given by learned Magistrate 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.

Further, I find that the information, as per prosecution version was given by Mohinder Goel to SI Puran Chand but he has not been examined in this case. Though, the complaint can be filed by the senior officer to whom he is sub-ordinate but the statement of SI Puran Chand was necessary. He was supposed to come to the witness box to prove that false information was given by the accused to him on that date. As SI Puran Chand has not been examined, therefore, valuable right of the accused has been prejudiced.

Secondly, PW-2 SI Sanjeev Kumar, as discussed by the Court, is a formal witness. He has stated only regarding presentation of cancellation report before learned CJM, which was accepted. Further, in his cross-examination, this witness stated that he does not know regarding the facts of the case. SI Sampuran Singh was also not examined, who filed the

Kalandra and the police official, to whom the information was given was

also not examined. Now, statement of PW-1 SI Gurcharan Singh only remains on the record. He stated that FIR No.3 dated 21.01.2002 under Section 307 IPC, for investigation was received by him as per order of DIG, Ferozepur Range, Ferozepur. A board was constituted consisting DSP(D), DSP(City) and Incharge CIA. The board submitted its report and case got registered by Mohinder Goel was found false.

Firstly, this report has not been placed on record. Secondly, none of these persons, who were members of the board, has been examined to prove that information was false. Mere fact that report has been mentioned in the Kalandra itself, in no way, can be held as proved as per law. Furthermore, the police, for the first time, filed cancellation report on 26.05.2002, which means that at that time the police came to know that it was a false information. The limitation as per Section 468 Cr.P.C. for filing Kalandra under Section 182 IPC is only one year.

Learned counsel for applicant argued that as the matter was pending before the Court, the Court had directed for further investigation, therefore, Kalandra could not be filed at that time under Section 182 IPC. As per provisions of Cr.P.C., the limitation starts from the date, on which the information given by a person is found to be false. Therefore, the limitation started from the day when the cancellation report was filed by the police before the Court and police came to know that false information has been given. The prosecution should have applied under Section 473 Cr.P.C. for extension of period of limitation by filing application along with Kalandra by giving all the reasons that further investigation has been ordered in the matter and it remained pending. That Court would have

recourse has been taken. Moreover, this point was not argued before lower Court nor it can be seen at this stage. In my view, Kalandra is time barred.

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-respondent has been rightly acquitted. In no way, the findings can be held as perverse or against the evidence and law.

In view of the above discussion, I find that the impugned judgment dated 18.04.2013 passed by learned CJM, Ferozepur, 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.

February 26, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No