

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1404-MA-2015 (O&M)
Date of Decision: 28.05.2019

State of Haryana

.....Applicant

Versus

Karnail Singh and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Sandeep Moudgil, Additional A.G., Haryana,
for the applicant.

Mr. D.P.S. Bajwa, Advocate for respondent No.1.

Ms. Sumanjit Kaur, Advocate, for respondent No.2.

Harnaresh Singh Gill, J.

State of Haryana has filed the present application under Section 378(3) Cr.P.C. for grant of leave to appeal against the order dated 10.12.2014 passed by the learned Additional Sessions Judge, Jind.

Vide impugned order, the trial Court has acquitted the respondents of the charges under Sections 279, 482, 487, 465, 471 IPC and Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

As per the case of the prosecution, on 28.4.2012, Ved Parkas SI along with HC Om Parkash, EHC Ramesh Kumar and C.Ravinder Kumar, was present for patrolling at T-Point, Kheri Masania. At that time, a Scorpio vehicle bearing Registration No. HR-20W-5763 was seen coming from Uchana

Kalan side being driven in a rash and negligent manner. Upon suspicion, SI Ved Parkash signalled the said vehicle to stop but the driver of the vehicle accelerated the speed of the vehicle. One more person was sitting next to the driver's seat. The police officials chased the vehicle but after crossing the railway line, the driver of the Scorpio Vehicle turned the said vehicle towards Kacha rasta of village Kharakbura and they could not see the vehicle due to dust. When the police officials proceeded further, they found the vehicle turned turtle with both the occupants having already fled from the scene. Thereafter, during the search of Scorpio vehicle, white colour bags containing poppy straw (chura Post) were recovered.

After seizing the contraband as also alleged two number plates bearing No. HR-16K-0783 along with registration certificate pertaining to the said number recovered from the pocket of the driver's seat, the same were taken into possession. The said registration certificate was in the name of one Suba Singh son of Rajender Singh resident of Kalinga, District Bhiwani. Besides a mobile phone bearing No.9815799216 was also recovered and upon inquiry, the ID of the said number was found to be that of Karnail Singh son of Sucha Singh. After registration of the case, necessary formalities, including preparing of the samples, affixing of the seals etc., were completed. Said Suba Singh was joined in the investigation, who produced affidavit regarding sale of the Scorpio Vehicle to respondent Karnail Singh. Suba Singh was found innocent

during investigation. Besides, ID of Mobile No. 9815799216 was obtained from the Cyber Cell.

On 8.10.2012, the respondents allegedly suffered a disclosure statement in another case, i.e. FIR No. 78 dated 4.10.2012 under Section 15 of the Act and Sections 467, 468 and 471 IPC at Police Station Ghagha, about their involvement in the present case. Upon this, they were joined in the investigation of the present case and their disclosure statements were recorded.

Prosecution led its evidence. Statements of the accused under Section 313 Cr.P.C. were recorded in which they pleaded not guilty and claimed trial. However, they did not lead any evidence in defence.

After taking into consideration the evidence on record and the rival contentions of the parties, the learned trial Court, vide the impugned order, acquitted the respondents of the charges framed against them holding that the prosecution could not prove its case against the respondents beyond the shadow of doubt.

Learned State counsel while challenging the impugned order of acquittal has argued that since it was proved before the learned trial Court that it was respondent-Karnail Singh, who is the owner of the vehicle, after the said vehicle was sold to him by its previous owner Suba Singh, the onus lay on the respondent-Karnail Singh to prove as to how the said vehicle was found turned turtle by the police at the scene of occurrence.

It is further argued that recovery of the contraband from the

vehicle along with the fake number plates and registration certificate, makes it apparent that the said vehicle was being used by none other than its owner i.e. Karnail Singh. However, the learned trial Court, has completely brushed aside the said material aspects resulting into the acquittal of the respondents.

After hearing the learned State Counsel, we do not find any merit in the present application seeking leave to appeal and the same is liable to be dismissed.

The respondents had been indicted and subsequently arrested in the present case on the basis of their alleged disclosure statements made on 8.10.2012 in FIR No. 78 dated 4.10.2012 registered at Police Station Ghagga. After they were made by the police to join the investigation, they had suffered their disclosure statements confessing to the commission of the crime.

However, the said disclosure statements cannot be read into evidence as the same does not satisfy the statutory requirement of Section 27 of the Evidence Act, 1872. It may be noticed that Section 25 of the Evidence Act, stipulates that confession made to the police is not admissible in evidence, whereas Section 26 provides that any confession made during police custody, shall not be admissible in evidence. However, Section 27 of the Evidence Act, is an exception to the aforesaid two Sections. It makes the confession made before the police and/or in the police custody admissible in evidence if pursuant thereto any recovery is effected or a fact is discovered.

In the instant case, the alleged incident occurred on 28.4.2012 leading to the registration of the FIR on the same very day and recovery of the Scorpio Vehicle along with contraband and fake number plates as also the registration certificate of the vehicle. The respondents had allegedly made confession (in the form of disclosure statements) before the Police of P.S. Ghagga, in FIR No. 78 dated 4.10.2012 regarding their involvement in the present case. Thus, even if the said confessional statements are taken into consideration, the same would not qualify the mandate of Section 27 of the Evidence Act, as no recovery of any fact or property has been done after the alleged confession by the respondents. Hence, the alleged disclosure statements cannot be made the basis for recording a finding of guilt against the respondents.

Still further, from a perusal of the impugned order, it is apparent that the material witnesses i.e. PW17-SI Ved Parkash and PW16- HC Om Parkash, could not prove the identity of the respondents as none of them had deposed that the accused persons, present in the Court were the same, who were travelling in the Scorpio vehicle. Hence, even the identity of the respondents was not proved.

Another factor, which casts doubt on the prosecution story is that as per the prosecution version, the vehicle along with contraband, fake number plates etc., were seized on 28.4.2012. Identity of Mobile No. 9815799216 was obtained from the Cyber Cell on the same very day. It is, thus, totally unfathomable as to why the respondents were joined in

investigation of the present case on 20.11.2012, whereas as per the facts on record, they had allegedly made confessional statements before the Police of Police Station Ghagha, District Patiala on 4.10.2012.

In our opinion, the learned trial Court has rightly taken into consideration all the aforesaid aspects while acquitting the respondents. Therefore, we do not find any patent illegality or perversity in the impugned judgment of acquittal passed by the trial Court which may warrant interference by this Court.

In view of the above, application seeking leave to appeal is dismissed. Leave to appeal is declined.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

28.05.2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No