

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1208-2019

Reserved on: 05.09.2022

Pronounced on:08.09.2022

Baljit Singh

...Applicant(s)

Versus

Harish Chander Chopra and others

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present: Mr. J.S. Maanipur, Advocate,
for the complainant-applicant.

N.S. SHEKHAWAT, J.

The instant application under Section 378 (4) of the Code of Criminal Procedure arise out of the judgment dated 26.09.2018 passed by the learned Judicial Magistrate, 1st Class, Hoshiarpur, whereby the respondents-accused were acquitted of the charges in a complaint bearing No.14/2009 under Sections 218, 219, 363, 364, 341, 365, 367, 506, 511 and 120-B IPC. The learned trial Court noticed number of discrepancies in the version of the complainant, brought to the fore by the defence, creating serious doubts over the version of the complainant; extended the benefit of doubt and acquitted the respondents of the charges against them. Feeling aggrieved, the complainant moved the present application with a prayer to grant leave to appeal against the impugned judgment.

Shorn of unnecessary details, the brief facts, which are necessary for disposal of the matter, are that a criminal complaint under Sections 218, 219, 363, 364, 341, 365, 367, 506, 511 and 120-B IPC was filed by Baljit Singh-complainant against the respondents in the Court of learned

Chief Judicial Magistrate, Hoshiarpur with the broad allegations that he had filed contempt proceedings against accused Harish Chander Chopra (respondent No.1 herein) and Gursharan Singh Sandhu in the Court of learned District & Sessions Judge, Hoshiarpur, which was fixed for hearing on 12.06.2009. At about 11.30 AM, when the complainant came out of the court of learned Sessions Judge, Hoshiarpur, Sandip Kumar, SHO, Police Station, Model Town, Hoshiarpur (respondent No.2 herein), ASI Chanan Singh (respondent No.3 herein) and Harish Chander Chopra (respondent No.1 herein) and some other police personnel, in a pre-planned manner, encircled the complainant-Baljit Singh, in order to abduct him. A threat was extended by SHO Sandip Kumar-respondent No.2 that they would challan him under Sections 107/151 Cr.P.C. and forcibly abducted the complainant/appellant by holding his wrist and dragged him to the official jeep with the help of other police personnel and Harish Chander, respondent No.1. The accused forcibly tried to put him in the official vehicle, i.e. Tempo Trax. On this, the complainant raised alarm, whereupon father of the complainant and several other persons, who were present in the Court complex, gathered there and saved the complainant from the clutches of the accused. The accused hurled abuses and threatened the complainant to withdraw all the cases against them, otherwise they would eliminate and he would be involved in a false case under the NDPS Act or any other criminal case, where he will be sent to jail and will not be able to get bail. It was further alleged that the said occurrence was witnessed by father of complainant and several other persons.

The applicant-complainant immediately moved an application (Ex.CW1/B) before the learned District & Sessions Judge, Hoshiarpur and

narrated the occurrence to him. Sandip Kumar, SHO (respondent No.2) with the connivance of other accused got registered a false and frivolous complaint on 12.06.2009 and also filed a wrong enquiry report against the complainant in order to save themselves. Still further, accused Sandip Kumar, SHO and ASI Chanan Singh had misused their official position by coming to Sessions Court Complex, which was not situated within their territorial jurisdiction. A complaint was presented before the Court of learned Chief Judicial Magistrate on 05.09.2009, i.e. after about 03 months of the occurrence.

Before proceeding further, it would be necessary to refer to the complaint dated 12.06.2009 (Ex.CW1/B), which is stated to have been made by the complainant to the learned Sessions Judge, Hoshiarpur immediately after the occurrence on 12.06.2009. The applicant-complainant has reproduced the same in para 3 of his application and for ready reference, the same is being reproduced below:-

“To

*The Hon’ble Session Judge,
Hoshiarpur.*

Sub: With regard to giving threats and involving me in false case today i.e. 12.06.2009 at 11.30 A.M. by Retired D.S.P. Harish Chander and Inspector (S.I.) Sandip Singh, A.S.I. Chanan Singh.

Sir,

I Baljit Singh son of Shangara Singh am resident of Mohalla Guru Nanak Nagar, Hoshiarpur. Today, I came to the Hon’ble Sessions Court for attending my complaint case filed by me against Gursharan Singh and Harish Chander retired D.S.P. Whereas when I went outside of your court about 3-4 karams then the aforesaid police personnels who are Inspector (S.I.) Sandip Singh, A.S.I. Chanan Singh and Retired D.S.P.

Harish Chander have gharowed me and told me that today you will be challaned under Sections 107/151 Cr.P.C. and further asked me to sit in the vehicle and threatened me that if the present contempt is not withdrawn then you will have to face worse results. In this regard I have also informed you at that very moment. At the time of incident my father was also present with me.

My life and property may kindly be protected because I have filed the present contempt against the senior police officers, who are putting pressure upon me to withdraw the present contempt and I have strong apprehension of danger of my life and property.

Kindly protect my life and property and action be taken against the accused. I shall be highly thankful to you. I may kindly be protected from the police department and near Harish Chander Commandant also they have gharowed me within the area of the court.

Yours faithfully,

Sd/-Baljit Singh son of Shri Shangara Singh, resident of Mohalla Guru Nanak Nagar, House No.262, The and District Hoshiarpur Dated 12/06/2009.”

The trial was held before the Court of learned Judicial Magistrate 1st Class, Hoshiarpur and both the parties have led their respective evidence before it. Ultimately, the learned trial Court held that the complainant could not establish that an attempt for abduction under a criminal conspiracy was made by the accused. It is held that upon failure of the complainant to establish the substantive offences, mere allegations of criminal intimidation cannot be assumed *ipso facto* and in isolation, especially when the evidence of the complainant has been rendered doubtful. The complainant is required to prove the offences beyond shadow of reasonable doubt that the accused are indeed guilty of having committed

the offences for which they have been charged with. The learned trial Court took notice of number of discrepancies appearing in the testimonies of various witnesses of the prosecution, which cast a cloud of suspicion over the version of the complainant and while extending the benefit of doubt, the respondent/accused were ordered to be acquitted.

Assailing the findings of the acquittal recorded by the learned trial Court, the complainant preferred the instant appeal coupled with an application under Section 378(4) Cr.P.C. with a prayer to grant leave to appeal before this Court.

We have heard the learned counsel for the complainant-applicant at length and with his able assistance have perused the evidence available on record.

In criminal law, the first and prompt version of the complainant is always accorded supremacy. The delayed version always needs to be viewed with caution and circumspection as the same might be susceptible to improvements, afterthoughts and embellishments. In the instant case, the first version of the complainant was recorded in the shape of his complaint (Ex.CW1/B), which was moved by him to the learned Sessions Judge, Hoshiarpur. Even if the said version is perused, it is at the most referring to a request to the complainant to sit in the official vehicle, whereas the version put forth in the instant complaint dated 05.09.2009, i.e. almost three months of the occurrence, the allegations levelled by the complainant are in a stark contrast. The applicant-complainant not only self contradicted while deposing before the court, but the complaint in question is apparently an exaggerated version. The complainant had put on record Ex.CW1/B, which was initially moved to the learned Sessions Judge immediately after

the occurrence, in which he alleged that he had covered 3-4 Karam of distance after attending the court of learned Sessions Judge, he was encircled by the accused and was told that he would be challaned under Sections 107/151 Cr.P.C. and further asked him to sit in the vehicle and threatened him that in case the contempt proceedings were not withdrawn, he would have to face dire consequences. It was also alleged in the complaint (Ex.CW1/B) that he had informed the learned Sessions Judge at that very moment and at the time of incident his father was also present.

Whereas a cumulative reading of the complaint (Ex.CW1/B) and the complaint in question would establish that the complainant left no stone unturned in improving the version, to ensure the implication of the respondents in a criminal case. The applicant-complainant alleged in the complaint that at about 11.30 AM on 12.06.2009, when he came out from the court of learned Sessions Judge, Hoshiarpur, the respondents and other police personnel, encircled him in a pre-planned manner, in order to abduct him and forcibly tried to put the applicant into official vehicle, i.e. Tempo Trax. Sandip Kumar, SHO-respondent No.2 told the applicant that they would challan him under Section 107/151 Cr.P.C. The appellant was held by his wrist and dragged him to the official jeep with the help of other police personnel and Harish Chander, in order to abduct him. When the complainant raised the alarm, the father of the appellant and the persons present in the Court Complex tried to save him from the clutches of the accused. A threat was extended by the accused that they would eliminate the applicant-complainant and would also involve him in a false case under the NDPS Act or any other criminal case and that they would send the applicant into jail and he would not be able to get the bail. Apart from this,

several other serious allegations were levelled in the complaint by the applicant, which were completely missing in the first version of the complainant.

Even the allegations levelled by the complainant are highly unnatural and unbelievable. It has been alleged that the accused tried to abduct the complainant from a place which was hardly 24 feet away from the Sessions Court. The complainant as well as the accused had served in the Police Department and were well acquainted with the laws and the judicial proceedings. The place of occurrence is generally not of much relevance, however, in the instant case, place of occurrence is also a material fact for adjudication of the matter. It is unbelievable that the accused had the intention to abduct the complainant and they chose the place of abduction as the premises of District Court and that too right outside the office/court room of the District & Sessions Judge. It is highly unbelievable that the police officials/ex-police officials wanted to carry out such a serious offence of abduction and they would choose the place of occurrence to be near the Sessions Court. Even the learned trial Court has rightly pointed out that in case the policemen in uniform had in fact hatched a conspiracy to abduct the applicant-complainant and had made an unsuccessful attempt, then under normal circumstances, they would have immediately fled the place of occurrence after such failure. However, in the instant case, it is the admitted case of the complainant himself that the accused themselves voluntarily accompanied the complainant to the office of learned District & Sessions Judge, Hoshiarpur in order to rebut the allegations of the complainant then and there.

Still further, the evidence clearly suggests that the accused had

got recorded a DDR entry prior to leaving for Sessions Court for taking action in the matter, which was reported to them. Moreover, the defence had examined Opinderjit Singh Ghuman as DW-1, the then SP (Headquarters), who had specifically directed Sandip Kumar, SHO-responder No.2 to visit the District Courts, where some matter was reported and the said fact clearly disapproves the allegations of the complainant that Sandip Kumar, SHO and other police personnel were acting at the dictates of some other persons and had hatched a conspiracy to abduct and intimidate him into withdrawing the proceedings initiated by him.

In the complaint in question as well as in his initial version Ex.CW1/B, the applicant-complainant alleged that while he was being abducted by the accused, his father was also present with him, who along with other accused had rescued the applicant/complainant from the clutches of the accused/respondents. His father was the most material witness to support his claim, but surprisingly the complainant chose not to examine his father as a witness. Rather the complainant examined Jarnail Singh as CW-3, a retired DSP, as an eye witness. Again it is surprising to note that Jarnail Singh, CW-3, was never cited as a witness by the complainant in his initial version or subsequent complaint. Even otherwise, the version of Jarnail Singh, CW-3, was highly unbelievable and separate findings are being recorded in the judgment in this regard.

Even from a perusal of testimony of CW-6-Baljit Singh, applicant, it is apparent that he is not a witness, worthy of any credence. He had improved his version, while deposing as CW-6 before the trial court and was duly confronted with the initial version and other exhibits in that regard. As observed above, he made a deposition, which was contrary to

his initial complaint, submitted by him to the learned Sessions Judge, Hoshiarpur. Apart from that, it appears that the complaint in question was filed by the applicant/complainant with some oblique motive and is aimed at polluting the process of justice. His testimony before the court clearly spells out that he is a chronic litigant. He admitted in his cross-examination that he had filed a complaint case titled as 'Baljit Singh Vs Vijay Pal', which is pending adjudication in the Court of Ms. Rubina Joshan, JMIC, Hoshiarpur. Again, this case is against a Police Officer. He admitted that he is a complainant in two criminal cases titled as 'Baljit Singh Vs. Gursharan Singh Sandhu' and 'Baljit Singh Vs. Harsih Chander Chopra and others'. However, both the complaint cases had now been dismissed. He had filed a revision petition in the court of learned Sessions Judge. Still further, he admitted in his testimony that the police had conducted an enquiry on the allegations, as levelled by him in this complaint and a departmental enquiry was also conducted. He had joined both the enquiries and all the allegations were found to be false in the departmental enquiry. He further admitted that he had filed other complaints against Harish Chander and other officials of the Police Department, under whom he was working at Jahan Khelan. Even he admitted that the name of CW-3 Jarnail Singh, DSP had not been mentioned as a witness by him in the application moved to learned District & Sessions Judge, Hoshiarpur. He further admitted that name of CW-3 Jarnail Singh, DSP, was not mentioned as a witness in the complaint/application moved by him to the higher police authorities.

Consequently, we agree with the findings recorded by the learned trial Court in this regard and no reliance can be placed on the testimony of CW-6-Baljit Singh (applicant).

Similarly, at a later stage, the complainant-applicant introduced CW-3 Jarnail singh, a retired DSP, as an alleged eye witness to the occurrence. The said witness admitted in his cross-examination that the appellant had served with him in Jahan Kehlani in the year 2006-07. He admitted that he had seen the occurrence from a distance of 8/10 yards in the first instance, however, he did not go to rescue Baljit Singh, applicant. He further admitted that he did not inform any superior officer with regard to the occurrence and also did not deem it appropriate to inform any other authority. He did not inform the police or anyone about the occurrence. Being a Police Officer, he admitted that the nature of alleged offence mentioned by him in his testimony was such that immediate action was required and information was to be given to the Police without any delay, but he did not deem it appropriate to inform anyone. He admitted the suggestion that he should inform to the officials of Police Department, as he retired DSP from the Punjab Police. From a perusal of his testimony, it is evident that the said witness had not at all witnessed the occurrence and his testimony is liable to be discarded.

Learned counsel for the applicant-complainant submitted that Sandip Kumar, SHO-respondent No.2, was admittedly the then Station House Officer of Police Station, Model Town, Hoshiarpur. However, the area of Sessions Court Complex is statelily fall within the jurisdiction of Police Station City Hoshiarpur. Consequently, Sandip Kumar, SHO acted in gross violation of law and had gone beyond his jurisdiction limits in order to commit the offences, as alleged by the complainant. However, the said argument has been rightly rejected by the learned trial Court by holding that the defence had examined DW-1 Opinderjit Singh Ghuman, the then

Superintendent of Police (Headquarters), Hoshiarpur, who proved to have deputed Sandip Kumar, SHO on the date of occurrence. He admitted that he had sought the availability of SHO, Police Station, City Hoshiarpur, within whose jurisdiction the area of Sessions Court Complex fall at the relevant time. But since the SHO Police Station, City Hoshiarpur was on leave, he deputed Sandip Kumar, SHO-respondent No.2 to take stock of the situation and to act as per law. Consequently, Sandip Kumar, SHO-respondent No.2 reached at the place of occurrence, where the complainant was allegedly having some hot exchanges with Harish Chander Chopra.

We are of the considered opinion that the learned trial Court had noticed serious infirmities in the prosecution version and the learned trial Court was correctly left with no choice but to give benefit of doubt to the respondents/accused, according to settled principles of criminal jurisprudence. The learned trial Court rightly recorded that the material witnesses of the prosecution had improved their versions and the same had to be discarded.

On careful perusal of the entire evidence available on record and the submissions made by learned counsel for the applicant-complainant, we are of the considered view that the impugned judgment of acquittal rendered by the learned trial Court is liable to be confirmed. Moreover, the learned trial Court had the advantage of watching the demeanour of the witnesses, who had given the evidence, therefore, the Appellate Court should be slow to interfere with the decisions of the leaned trial Court. An acquittal by the learned trial Court should not be interfered with unless it is totally perverse or wholly unsustainable.

Considering the totality of the facts and circumstances of the

case noted above, the present application for grant of leave to appeal is without any merit and, therefore, the same is dismissed.

Case property, if any, be disposed off as per law after expiry of period of limitation. The trial Court record be sent back.

Pending miscellaneous application(s), if any, is disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(N.S. SHEKHAWAT)
JUDGE

08.09.2022

mks

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO