

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-1127-MA of 2015 (O&M)
Date of decision: December 11, 2015

Assistant Director of Income Tax (Inv.)-II

...Applicant

Versus

Sh.Dhan Singh Sharma

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rajesh Sethi, Senior Standing counsel
for the applicant.

INDERJIT SINGH, J.

Applicant-Assistant Director of Income Tax (Inv.)-II has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Dhan Singh Sharma, challenging the judgment of acquittal dated 22.10.2014 passed by learned Judicial Magistrate Ist Class, Faridabad, in complaint No.RBT-9 of 2007 titled as 'Deputy Director of Income Tax (Inv.) Ambala vs. Sh.Dhan Singh Sharma.

It is mainly stated in the application that accompanying appeal is likely to succeed on the grounds taken therein. After giving facts in detail in the application, it is prayed that special leave to appeal be given.

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

As per the record, Deputy Director of Income Tax (Inv.) Ambala filed a complaint against Dhan Singh under Section 181 IPC. As per complainant's version, statement of accused was recorded on oath under Section 132(4) of the Income Tax Act, 1961. During the course of search of residence of accused, an incriminating document was found and seized as page no.69 and the said document contained a handwritten account and bears a head 'D.S.Doors' on the top. The accused was asked vide question No.16 on page 10 of the statement to explain the nature of account No.69/A-1/07.02.2007 and also to explain that whether it had been accounted for in the books of accounts. Accused stated that it was rough estimate and did not relate to him and it was left for the department to understand the document in the light of other evidences gathered during the search. The department had seized the computers containing the books of accounts of M/s D.S.Doors Pvt. Ltd. and M/s Woodtech Limited during the search of business premises. These were later on operated and print outs of purchased accounts of these companies for the financial year 2006-07 were taken out and duly authenticated by the accused on 26.02.2007 and 27.02.2007. When the entries on the document 69/A-1/7.2.2007 were co-related with the said purchase accounts of M/s D.S.Doors Pvt. Ltd. and M/s Woodtech Limited, it revealed that documents contains bill number and bill amount of Mango and Shisham wood purchase. Accused knew that the document 69/A was not rough estimate and that it is related to the purchase account of M/s D.S.Doors Pvt. Ltd. and M/s Woodtech Limited. Accused was

asked vide letter No.4648 dated 15.03.2008 to show cause as to why the prosecution under Section 181 IPC may not be initiated against him for making false statement before a public servant. In the reply, the accused remained non-committal as he has neither denied the allegation of the department that he had made a false statement or he reiterated the stand taken by him in the reply to question no.16 on page 10 during the statement given on oath.

Learned Judicial Magistrate 1st Class, Faridabad, after appreciating the evidence, dismissed the complaint and acquitted the accused vide impugned judgment dated 22.10.2014.

At the time of arguments, learned counsel for the applicant has not pointed out as to how the reasonings given by the Court below are perverse or against the evidence and law. Learned counsel for the applicant shown the statement of the complainant recorded during the search proceedings. At the start of the statement, the oath was given to respondent-accused Dhan Singh Sharma and even the signatures were obtained regarding oath. Then from 1 to 9 pages, the statement was recorded in question-answer form and then the signatures of respondent and competent authority were taken and RO&AC has been written, which means that statement was 'read over and accepted correct' by the person making the statement. It also leads to inference that this statement has been completed when the signatures of Dhan Singh Sharma were taken. Thereafter, the statement was again recorded by writing about continuity of the statement. No time was mentioned as to when this statement was

again started recording i.e. after how much time the statement was again started. Learned counsel for the applicant admitted at the time of arguments that statement was re-started after some time on the same day. There was a break in recording the statement and whenever it is to be again recorded, the oath is to be given again to the witness/accused but no such oath has been given second time when the statement was again recorded.

Learned Magistrate after discussing the provisions held that question No.16, which was recorded later on, while recording the statement after the completion of first statement, is without oath. The finding of learned Magistrate is correct, as per law and does not require any interference from this Court.

Learned counsel for the applicant cited judgments passed by the Hon'ble Supreme Court in ***State of Maharashtra vs. Sujay Mangesh Poyarekar, 2008(4) RCR (Criminal) 555, Mishrilal and others vs. State of M.P. and others, 2005 SCC (Cri) 1712, State of U.P. vs. Rashid and another, 2010(1) SCC (Cri) 486*** and judgment passed by the Hon'ble Bombay High Court in ***Yogita P. Gosalia vs. S.B.Morey and another, 2010(3) Bom.C.R. (Cri) 760***. I have gone through all the above-cited judgments and the same will not apply in the present case as none of the judgment is on the material point regarding non-administering of oath.

In view of the above discussion, I find that the findings given by learned Court below are as per evidence. The judgment dated 22.10.2014 passed by learned Judicial Magistrate Ist Class,

Faridabad, is correct, as per law and evidence.

Keeping in view above facts and circumstances, I find that no ground is made out to grant permission for leave to appeal and therefore, the present application stands dismissed.

December 11, 2015
Vgulati

(INDERJIT SINGH)
JUDGE