

**Court No. - 15**

**Case :-** CRIMINAL APPEAL No. - 435 of 1994

**Appellant :-** U.P. Pollution Control Board

**Respondent :-** M/S. Badri Paper Mills Ltd.

**Counsel for Appellant :-** Kamlesh Singh,A.K. Verma

**Counsel for Respondent :-** Sushil Kumar,Pushpila Bisht

**Hon'ble Shamim Ahmed,J.**

Heard learned Counsel for the parties.

By means of the present appeal alongwith Application for grant of Special Leave for Appeal under Section 378 of Cr.P.C., 1973, in case of acquittal of respondents Nos.1 to 7 by Respondent No.8 in Criminal Case No.72 of 1993 decided on 06.04.1994 against appellant/complainant.

Brief facts of the case are that the Regional Office of U.P. Pollution Control Board (appellant herein) has filed a criminal complaint under Section 44 of Water Act stating therein that opposite party Nos. 2 and 7 have established the Industry in the name and style of opposite party No. 1. As per provisions of Water Act it was obligatory on the part of opposite parties to follow provisions of Section 25 & 26 of the Water Act and to get consent for discharging their effluent on stream or sewer or on land. According to Section 25/26 of the Water Act there is a mandatory provisions that no person shall without the previous consent of the State Board for bringing into use any new or altered outlet for the discharge of its trade effluent into the stream or well or sewer or on land as defined in Section 2 of the Act read with its amendment Act of 1978. The consent application of opposite party No. 1 was received on 25.03.1982 and the same was rejected on 29.06.1982. It was also stated in the complaint that the Industry was several times inspected by the Officers of the Board and every time it was found that the Industry was discharging their polluted trade effluent in Yamuna river.

The court below, after having heard both the counsels for the parties and after recording statements of witnesses, acquitted the opposite parties from the charges framed against them vide impugned judgment and order which is under challenged in this appeal.

The learned court below in the impugned judgment and order has gave a specific finding that on the basis of documentary evidence it appears that for prosecuting the accused persons documents were prepared by the Board legally but those documents have not served upon them. There appears several discrepancies about preparation of samples and sending them to laboratory as the prosecution has failed to prove that after taking samples it was sent to laboratory as there is no such report of laboratory.

Learned counsel for the appellant submits that the court below did not appreciate the evidence on record. He further submits that prosecution has successfully proved the offence against the accused persons on the basis of evidence. The judgment was passed without considering the statements of witnesses and the case set up by the prosecution. Therefore, this Hon'ble Court may grant leave to challenge the judgment and order dated 06.04.1994 and the same may be set aside by this Court.

I have gone through the impugned judgment and order and found that in the present case, the court below, after considering the entire evidence on record including the statements of witnesses and accused persons appeared before the court below, found that the entire prosecution has been lodged in a mechanical manner on the basis of some paper documents, which documents have not been proved to have been received to the accused persons. Learned court below has also given its finding that sample of trade effluent has not been proved by the witnesses, and there is no laboratory report on record in this regard to prove the case of prosecution. The evidence adduced by the witnesses were also found doubtful, therefore, the court below has rightly passed the impugned judgment and order acquitting the accused persons.

An appeal against the acquittal stands on a different footing from the appeal against the conviction. Hon'ble the Apex Court in a very recent judgment in the case of ***Sadhu Saran Singh Vs. State of Uttar Pradesh and Others*** reported in **(2016) 4 SCC 357** has considered this difference and has observed in paragraph nos.20 and 21 as under:

*"20. Generally, an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against conviction. In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate court would interfere with the order of acquittal only when there is perversity of fact and law. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. This Court, while enunciating the principles with regard to the scope of powers of the appellate court in an appeal against acquittal, in Sambasiva V. State of Kerala; 1998 SCC (Cri) 1320 has held:*

*"7. The principles with regard to the scope of the powers of the appellate court in an appeal against acquittal, are well settled. The powers of the appellate court in an appeal against acquittal are no less than in an appeal against conviction. But where on the basis of evidence on record two views are reasonably possible the appellate court cannot substitute its view in the place of that of the trial court. It is only when the approach of the trial in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate court can interfere with the order of acquittal."*

*21. The Court, in several cases, has taken the consistent view that the*

*appellate court, while dealing with an appeal against acquittal, has no absolute restriction in law to review and relook the entire evidence on which the order of acquittal is founded. If the appellate court, on scrutiny, finds that the decision of the court below is based on erroneous views and against settled position of law, then the interference of the appellate court with such an order is imperative."*

In the light of the aforesaid guidelines, the impugned judgment has to be considered from the point of view whether the view taken by the court below was a probable view based on the material on record or it is an absolutely erroneous judgment devoid of merits.

A criminal trial proceeds with the presumption of innocence of the accused persons. With the acquittal of the accused persons this presumption of innocence stands fortified. So very strong and cogent reasons must exist in interfering the judgment of acquittal.

Keeping in view the aforesaid weakness of the prosecution case, as noted by the court below, I am of the view that the view taken by the court below was a probable and logical view, which is based on valid reasons. The judgment of the court below cannot be said to be illegal, illogical and improbable and not based on material on record or is based on erroneous views and is against the settled position of law. So, this Court is satisfied that there is absolutely no hope of success in this appeal and accordingly, no interference is called for.

Leave to appeal is **refused**.

Application for leave to appeal is **rejected**.

Accordingly, the appeal does not survive, and in view of above, the appeal is also **dismissed**.

No order as to costs.

Copy of this judgment be sent to the court below for its compliance.

**Order Date :- 17.10.2023**

Piyush/-