

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Crl LP(D) No. 14/2022

UT of J&K through
Police Station,
Billawar, District Kathua

..... Petitioner(s)/Appellant(s)

Through :- Mr. Ravinder Gupta, AAG.
v/s

Shah Nawaz, S/O Nabi Baksh
R/O Chanot Badderwah, District Doda

.....Respondent(s)

Through :- Mr. Amit Gupta, Advocate

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE**

JUDGMENT (ORAL)

Crl LP(D) No. 14/2022

The application, for the reasons stated therein as also in view of no opposition by learned counsel for the respondents, is allowed and leave to file appeal is granted.

Registry to diarize and number the appeal.

CrLA (AD) No. 21/2024

- 01.** Admit
- 02.** Notice.
- 03.** Mr. Amit Gupta, Advocate waives notice on behalf of the respondent.
- 04.** With the consent of learned counsel for the parties, the appeal is taken up for final disposal.
- 05.** This appeal by the UT of J&K is directed against an order and judgment of acquittal dated 11.11.2021 passed by Court of learned Sessions Judge, Kathua ("trial court" for short) in sessions case no. 110/sessions titled "*State*

(now UT of J&K) vs. Shah Nawaz” in FIR No. 199/2007 registered with Police Station Billawar, the learned trial court has acquitted the respondent of the charge under Sections 419, 420, 170 & 376 RPC.

06. Briefly put, the prosecution story, as was projected in the challan, is that on 25.12.2007 PW Mohd. Jamail lodged a written complaint in the Police Station, Billawar with the allegation that on 20.11.2007, he had gone to residence of one-Mohd. Saleem at Dharamkote, where he met respondent. The respondent introduced himself as Planning Officer and told him that he was contemplating to open sewing centres at Dharamkot and some other places. Respondent also assured PW Mohd. Jamail that he would appoint him as permanent Supervisor for consideration of Rs. 50,000/-. The complainant alleged that he believed the respondent and paid him a sum of Rs. 35,000/- on 22.11.2007 and promised to pay the remaining amount of Rs. 15,000/- at the time of receipt of appointment order. The complainant further disclosed before the police that he, later on, came to know that respondent was not a Planning Officer but a fraudster who was alluring the people with the false promises to mint money. It was also alleged by the complainant that respondent had even allured the prosecutrix and committed rape with her on the pretext of providing job. On the basis of this complaint, FIR 199/2007 came to be registered against the respondent in the police station concerned for commission of offences under Sections 419/420 and 376 RPC and the investigation was set into motion. Upon the completion of investigation, Sections 471, 468 and 170 RPC were also added.

07. The charges against the respondent were framed on 12.03.2008 for the offences under Sections 419,420,170 and 376 RPC. The respondent was

however, discharged by the trial court for commission of offences under Sections 468/471 RPC. The charge was read over to the respondent to which he pleaded not guilty and claimed to be tried. The prosecution was directed by the trial court to commence its evidence. The prosecution took about 7 years to conclude its evidence and examined only 06 out of 16 cited witnesses. On conclusion of the prosecution evidence, the incriminating circumstances appearing in the prosecution evidence were put to the respondent and his statement under Section 342 CrPC was recorded. The respondent denied all the allegations but chose not to lead any evidence in defence. The trial court after considering rival contentions and having gone through the entire evidence on record came to the conclusion that the prosecution had miserably failed to prove its case against the respondent. Resultantly, the trial court vide impugned order and judgment acquitted the respondent of all the charges.

08. The impugned judgment is sought to be assailed by the appellant solely on the ground that the trial court has acquitted the respondent on the basis of minor contradictions and has ignored the cogent and convincing evidence brought on record by the prosecution. Mr. Ravinder Gupta, learned AAG would argue that all the witnesses have in one voice deposed that they were defrauded of their money by the respondent on different occasions on the pretext of providing a job in the sewing centre which he was likely to open in his capacity as the Planning Officer of the Government Department. Neither the sewing centre was ever opened nor the money, which the respondent had received, was returned. He would argue that it was amply proved before the trial court that respondent was not a public servant and was not in any manner entrusted with the opening of any sewing centre. He therefore, submits that learned trial court

ought not to have taken note of the minor contradictions and rather should have relied upon the oral testimony of the villagers who had in one voice made the allegation that they were defrauded of their money by the respondent in lieu of providing them job.

09. *Per contra*, Mr. Amit Gupta, learned counsel for the respondent submits that the evidence on record is highly contradictory and the contradictions go to the root of the case. The complaint was lodged by one-Mohd. Jamail on 25.11.2007, whereas, the police registered an FIR only on 25.12.2007 i.e. after a period of one month. Neither the complainant Mohd. Jamail has been examined nor the I.O in the matter has been examined. The delay of one month in lodging the FIR, therefore, remains unexplained. He further argues that as per the allegation of the prosecutrix, and also as is deposed by her in the court, she was subjected to sexual assault during night at the house of Jamal Din, where, her father and brother were also staying. He argues that Jamal Din has been examined by the prosecution but he has not even whispered about any such incident having occurred at his residence. Interestingly, the father and brother of the prosecutrix, who, as per the statement of prosecutrix were present in the said house at the time of alleged rape too have not been examined.

10. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by trial court is legally perfect and in complete conformity with law. There are serious lapses in the prosecution case which otherwise is full of contradictions. The contradictions pointed out by learned counsel for the respondent are not the minor contradictions but are the contradictions that go to the root and challenge the veracity of the prosecution case. We are in agreement with learned counsel

for the respondent that the witnesses have though deposed that they had paid different amounts to the respondent on different occasions but have not given the time, date or month when such amounts were paid to the respondent. It is the allegation of the prosecution that respondent was claiming to be a Planning Officer and was possessing identity card in this regard. It is also the case of the prosecution that with a view to extract money from some of the prosecution witnesses and others, the respondent had issued appointment orders also. The police has made no effort either to seize the identity card or the appointment orders.

11. So far as the allegation of rape against the respondent is concerned, we are convinced that the evidence brought on record by the prosecution is too shaky to be relied upon. Admittedly, the complainant made such allegation in the first instance, at the time when he lodged the complaint with the police on 25.11.2007. Mohd. Jamail has not been examined to prove the contents of the complaint. The prosecutrix in her statement recorded under Section 164-A and thereafter, before the court has referred to the occurrence of rape having taken place in the house of PW Jamal Din. Jamal Din, in his deposition, has not referred to any such incident having taken place at this residence. Similarly, the father and brother of the prosecutrix, who were stated to be present in the house of Jamal Din, have also not been examined. The medical evidence on record also does not confirm the rape.

12. These are some of the major contradictions which we have noticed. The entire prosecution case is full of such major contradictions and therefore, the entire story projected by the prosecution does not inspire the confidence of the court. Otherwise also the jurisdiction of the appellate court to interfere with the

judgment of acquittal passed by the trial court is well-circumscribed and where, on evaluation of evidence on record, two views are possible, the view which favors the accused shall be preferred by the appellate court.

13. For the foregoing reasons, we find no merit in this appeal and the same is accordingly **dismissed**.

(Mohd. Yousuf Wani)
Judge

(Sanjeev Kumar)
Judge

JAMMU
27.11.2024
Abinash

Whether the judgment is speaking? Yes/No
Whether the judgment is reportable? Yes/No

