

Court No. - 86

Case :- APPLICATION U/S 378 No. - 128 of 2022

Applicant :- Dr. Ram Prakash Indoliya

Opposite Party :- State Of U.P. And 5 Others

Counsel for Applicant :- Sita Ram Sharma

Counsel for Opposite Party :- G.A.,Ramesh Chandra
Upadhyay

Hon'ble Nalin Kumar Srivastava,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and learned counsel for the opposite party nos. 2 to 6 and perused the record.

2. This application has been preferred by the applicant-complainant under Section 378(4) Cr.P.C. with the prayer that leave to appeal be granted against the judgment and order dated 20.09.2022 passed by learned Additional District and Sessions Judge/Special Judge (POCSO Act), Court No. 28, Agra in Session Trial No. 191 of 2022 (Dr. Ram Prakash Indoliya Vs. Ram Prakash and others), under Sections 147, 384, 294, 354A, 354C, 354D, 323/149, 504, 506 I.P.C. and Section 7/8 POCSO Act, Police Station- Achhnera District- Agra whereby the opposite party nos.2 to 6 have been acquitted.

3. It is submitted by learned counsel for the applicant that the impugned judgment and order dated 20.09.2022 is against the law applicable to the facts and circumstances of this case. It is further submitted that since the F.I.R. of the applicant-complainant was not registered in the police station, a criminal complaint was filed before the court concerned. It is further submitted that there is clinching evidence on record that the applicant-complainant runs a clinic in his house. The opposite party nos. 2 to 6 are criminal persons having their nuisance value and also garb the extortion money from the shopkeepers and doctors of their area. When the applicant-complainant refused to pay the extortion money to them, they started molesting and harassing the members of the family of the applicant-complainant. On 05.12.2016 they forcibly took away the minor daughters of the applicant-complainant and molested them but the F.I.R. was not registered. Subsequently an application under Section 156(3) Cr.P.C., moved by the applicant-complainant and the said application was treated as criminal complaint but subsequently the aforesaid opposite parties entered into the house of the applicant and started marpeat with him and broke the medical instruments and threatened him for dire consequences making pressure for compromise on

24.01.2019. Subsequently an F.I.R. was lodged and the matter culminated into charge sheet. It is further submitted that the learned trial court committed several procedural mistakes. It is also submitted that the learned trial court gave undue weightage to the defence evidence available on record whereas DW-1 Bachchu Singh, DW-2 Bansal Singh, DW-3 Dori Lal and DW-4 Sindhi Ram did not make any assistance to the defence side. It is also submitted that the impugned judgment and order passed by the learned trial court is absolutely erroneous and not in accordance with established principles of law. The acquittal of the opposite party nos. 2 to 6 by the learned trial court is not sustainable at all because the evidence on record was totally favorable to the prosecution and hence a prayer has been made to allow the application for leave to appeal and set aside the impugned judgment and order dated 20.09.2022 regarding acquittal of the opposite party nos. 2 to 6.

4. Per contra, learned counsel for the opposite party nos. 2 to 6/accused vehemently opposed the application under Section 378 (4) Cr.P.C.

5. Since it is an appeal filed by the complainant against the acquittal of the accused persons, it will be relevant to note the principles of law laid down by the Apex Court with regard to the appreciation of evidence in the appeal against the acquittal. Recently in ***Mallappa v. State of Karnataka, 2024 SCC OnLine SC 130***, the Apex Court has held as under:-

37. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:

(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive - inclusive of all evidence, oral or documentary;

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the

decision of the Trial Court.

6. In the case of ***Bannareddy v. State of Karnataka, (2018) 5 SCC 790***, in paragraph 10, the Hon'ble Apex Court has considered the power and jurisdiction of the High Court while interfering in an appeal against acquittal and in paragraph 26 it has been held that "the High Court should not have re-appreciated the evidence in its entirety, especially when there existed no grave infirmity in the findings of the trial Court. There exists no justification behind setting aside the order of acquittal passed by the trial Court, especially when the prosecution case suffers from several contradictions and infirmities".

7. In ***Jayamma v. State of Karnataka, (2021) 6 SCC 213***, the Hon'ble Supreme Court has been pleased to explain the limitations of exercise of power of scrutiny by the High Court in an appeal against an order of acquittal passed by a Trial Court.

8. In a recent judgment of this Court in ***Virendra Singh v. State of UP, 2022 (3) ADJ 354***, the law on the issue involved has been considered.

9. Similar view has been reiterated by Hon'ble Apex Court in ***Rajesh Prasad v. State of Bihar, (2022) 3 SCC 471***.

10. In the light of arguments advanced by both the parties, it is required to peruse the oral evidence of witnesses which are on record.

11. PW-1 the informant in his evidence supports the prosecution version. He states that whenever minor daughters of the complainant used to go to school, the opposite party nos. 2 to 6 started making quarrel with the patients of PW-1 and created all kinds of nuisance outside the house of the informant. His minor daughters were also molested by the aforesaid opposite parties and on making protest the minor girls were further harassed by the aforesaid opposite parties who even made an attempt for kidnapping of the minor girls. Physical assault made by opposite party nos. 2 to 6 upon the complainant is also proved by PW-1. PW-2 and PW-3 who are minor daughters of the applicant-complainant, also corroborated the prosecution version in the same manner as found in the testimony of PW-1. PW-4 the wife of PW-1 also corroborated the prosecution version and as a matter of fact, all the witnesses of fact supported the prosecution case almost in the same manner and there is no material contradiction in the entire deposition of the said witnesses.

12. The learned trial court while assessing the evidence on record made a finding that no indecent act on the part of the

opposite party nos. 2 to 6 caused to the complainant or his minor daughters prior to 05.12.2016 was ever complained of by the complainant to the police or any other higher authorities. The learned trial court has also highlighted some minor contradictions occurred in the deposition of PW-1, PW-2, PW-3 and PW-4 and in continuation thereof, he has also held that no independent witness has been adduced by the prosecution to support the oral evidence of PW-1, PW-2, PW-3 and PW-4. The prosecution case is not trustworthy. However, learned trial court relied upon the oral evidence of the defence witnesses who in their testimony denied of any such incident as alleged by the prosecution. On the basis of said considerations, the accused persons Ram Prakash, Harendra, Gopal, Jitendra alias Jeetu and Dharmendra were acquitted by the learned trial court.

13. The present appeal has been vehemently contested by learned counsel for the opposite party nos. 2 to 6 and it has been argued on their behalf that the evidence rendered by the prosecution fell short of the evidence which might be trustworthy and reliable in order to prove the case of the prosecution. It is further submitted that the learned trial judge has correctly pointed out the major shortcomings occurred in the prosecution case and evidence as well. The impugned judgment and order is not a result of any haste or re-appreciation of evidence on record. There is no illegality in the judgment and order of the acquittal passed in favour of opposite party nos. 2 to 6 and the application for leave to appeal deserves to be rejected.

14. After careful perusal of the judgment and order dated 20.09.2022 passed by learned Additional District and Sessions Judge/Special Judge (POCSO Act), Court No. 28, Agra and also assessing the aforementioned analysis and evaluation of the evidence with the aforesaid guidelines given by the Hon'ble Apex Court in the judgement of **Mallappa (supra)**, I am of the considered opinion that no interference is called for in the instant case as the complainant has failed to prove its case beyond reasonable doubt against the accused- Ram Prakash, Harendra, Gopal, Jitendra alias Jeetu and Dharmendra and therefore, they have rightly been acquitted by the Trial Court and there is no perversity in the impugned judgment.

15. Therefore, I find no merit in the application for leave to appeal and consequently, the application for leave to appeal is rejected.

Order Date :- 17.9.2024

Rmk.