Court No. - 16

Case :- APPLICATION U/S 378 No. - 126 of 2013

Applicant :- State of U.P.
Opposite Party :- Dev Sharan Tiwari And Another
Counsel for Applicant :- Govt. Advocate

Hon'ble Shamim Ahmed,J.

The case is taken up in the revised call.

Heard learned A.G.A. for the State and perused the material available on record.

The present leave to appeal under Section 378 Cr.P.C. has been filed against the judgment and order dated 02.04.2013 passed by learned Special Sessions Judge (S.C./S.T. Act), Faizabad in Sessions Trial No.164 of 2009, Case Crime No.1126 of 2008, acquitting the accused from the charges under Sections 352, 506 I.P.C., Section 3(1)(X) of S.C./S.T. Act and Section 7 of Criminal Law Amendment Act.

As per the prosecution version, the complainant submitted a written report on 02.12.2008 wherein it was mentioned that while he was performing official work, the owner of medical store, which was in the opposite side of the hospital, was knocking his door. When the complainant asked the reason, he said that he had a patient and he also started giving abuses on caste and also threatened him to kill. The complainant closed his door and asked Dr. R.P. Singh to see the patient but he refused and suggested that this patient is not of emergency.

The learned trial court after taking into consideration the facts and circumstances of the case and evidence available on record, passed the judgment and order of acquittal dated 02.04.2013.

Learned A.G.A. for the State submits that the learned trial court did not appreciate the evidence on record. He further submits that prosecution has successfully proved the offence against the accused on the basis of evidence. The judgment was passed without considering the statement of witnesses and the case set up by the prosecution and the judgment of the acquittal was passed on surmises and conjectures.

I have heard the learned A.G.A. for the State and considered the ground as well as gone through the judgment passed by the learned trial court.

In the present case from the statements given by the witnesses produced by the prosecution, I found that prosecution has failed to establish that the crime in question has been committed by the accused and there was no direct evidence produced by the prosecution regarding involvement of the respondent No.1 in

the crime.

Further, learned A.G.A. for the State could not point out any illegality or infirmity in the judgment and order of acquittal passed in favour of respondent which is before this Court.

Further, this Court observed that an appeal against acquittal stands on a different footing from the appeal against 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 raise 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:*
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> > *"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."*
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> *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 learned trial court 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 learned trial court, I am of the view that the view taken by the learned trial court was a probable and logical view, which is based on valid reasons. The judgment of the learned trial court 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 learned trial court for its compliance.

Order Date :- 25.7.2024
Piyush/-

Digitally signed by :-
PIYUSH YADAV
High Court of Judicature at Allahabad,
Lucknow Bench