Court No. - 16

Case :- GOVERNMENT APPEAL No. - 478 of 1997

Appellant :- State of U.P.
Respondent :- Ashrafi
Counsel for Appellant :- Govt. Advocate

Hon'ble Shamim Ahmed,J.

As per report of the Chief Judicial Magistrate, Barabanki, the opp. party Asharfi has died 22 years ago.

Even the case is taken up in revised call no one is present for the opposite party to argue this case.

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

The present appeal under Section 378 Cr.P.C. has been filed against the judgment and order dated 23.02.1989 passed by learned Munsif Magistrate, Lower Criminal Court, Barabanki, in Criminal Case No. 238 of 1988, acquitting the opp. party from the charge of Section 9 of the Opium Act

The prosecution case, in brief, is that on the basis of a secret information, on 02.12.1984 at about 3:00 p.m. the Inspector of Opium Department alongwith other officials and public witnesses raided the house of the opp. party and recovered 2.151 Kg. Opium from there.

The 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 23.02.1989.

Learned A.G.A. for the State-appellant submits that the 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 submissions advanced by the learned learned A.G.A. for the State-appellant and gone through the judgment passed by the trial court.

In the present case from the statements given by the witnesses produced by the prosecution, I find 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 opposite party 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 respondents 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:

"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 trial court 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 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 trial court, I am of the view that the view taken by the trial court was a probable and logical view, which is based on valid reasons. The judgment of the 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.

Accordingly, the present appeal against acquittal is **dismissed**.

No order as to costs.

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

(**Shamim Ahmed, J.**)

Order Date :- 23.7.2024
A.Nigam

Digitally signed by :-
ANUJ NIGAM
High Court of Judicature at Allahabad,
Lucknow Bench