

Court No. - 13

Case :- GOVERNMENT APPEAL No. - 416 of 1999

Appellant :- State of U.P.

Respondent :- Daya Shanker Agnihotri

Counsel for Appellant :- G.A.

Counsel for Respondent :- Amitabh Trivedi, Amitabh Tripathi, Rashid Murtaza, Vimal Kumar Srivastava

Hon'ble Saurabh Lavania, J.

1. Heard learned A.G.A. for the State and Shri Amitabh Trivedi, learned counsel for the accused-respondent.

2. The present appeal has been filed against the judgment dated 04.02.1999 passed by Special Judge, Corruption/II Additional Sessions Judge, Raebareli in Criminal Case No. 11 of 1994 (State Vs. Daya Shanker Agnihotri), Cae Crime No. 6 of 1994 whereby the trial Court, after taking note of the entire evidence on record, acquitted the accused-respondent from the charges under Section 7/13 Prevention of Corruption Act, 1988 (in short "Act of 1988"), Police Station - Lalganj, District - Raebareli.

3. The facts of the case in brief are to the effect that on 31.12.1993, a written report (Ex.Ka1) was made before the District Magistrate, Raebareli by the informant/Heera Lal against the accused-respondent. According to the same, the case of prosecution, in brief, is that the land no. 137/1 area one bigha thirteen biswas was allotted to the accused-respondent in the year 1976 and this land was made productive after spending huge amount and money and thereafter over this land Kedar Singh, Banwari Singh, Dharam Pal Singh, Suraj Pal Singh, Shiv Mohan Singh and other of neighbouring Village Kumhadavera took possession over the same and thereafter the informant/Heeralal contacted the accused-respondent namely Daya Shanker Agnihotri, who was lekhpal at relevant point of time, and the accused-respondent demanded Rs. 500/- from the informant for

measurement of the land and also threatened the informant that if money so demanded is not given he would inform the higher authorities that there was no land in existence.

4. Taking note of contents of the application dated 31.12.1993 (Ex.Ka1), the District Magistrate, vide letter No. Memo/ST.DM/93 dated 31.12.93, directed the Superintendent of Police, Raebareli for arranging necessary trap proceedings against the accused-respondent and in compliance thereof, the Circle Officer City, Raebareli (in short "C.O.") was directed to conduct trap proceedings and thereafter the C.O. along with the informant went to Police Station - Lalganj and arranged a trap party consisting of witnesses namely Putti Lal (P.W.1), Bishram (P.W.2), SHO Lalganj, and other police force and Sri R.N. Pandey, Additional Sub Divisional Magistrate Raebareli was also in the said team.

5. For the purpose of trap proceedings, signature of Sri R.N. Pandey, Addl. SDM were also obtained on the notes and thereafter, the informant/Heera Lal gave the said notes i.e. Rs.500/- to the accused-respondent. On receiving, the above notes i.e. Rs.500/-, the accused-respondent namely Daya Shanker Agnihotri told the informant that on 6th January he would visit village Mubarakpur and while returning he would measure the land in question allotted to him. On receiving an amount to the tune of Rs.500/- from the informant Heera Lal, the accused-respondent kept it in the right pocket of his pant. Thereafter, the accused-respondent was searched by search party arranged for trap proceedings particularly Ram Das, Tehsildar, Lalganj and after completion of necessary formalities the charge-sheet (Ex.Ka. 4) was filed on 10.05.1994 before the Court of Special Judge on 10.05.1994 and the matter was ultimately came before the Additional Sessions Judge, who passed the judgment under appeal.

6. Based upon the material evidence on record, the charge under Section 7/13 of the Act of 1988 was framed and the charge so framed was read over and explained to the accused-respondent, who denied

the charge and the story of the prosecution and upon denial, the accused-respondent was put to trial.

7. To support its case, the prosecution produced three witnesses namely Putti Lal (P.W.1), Bishram (P.W.2) and Ram Sundar Tiwari Deputy Supdt. Of Police (P.W.3). Thereafter, based upon the evidence produced by the prosecution, the trial Court put questions, as required under Section 313 Cr.P.C., to the accused-respondent, in response, he denied the case of the prosecution. He stated that he has been falsely implicated and the witnesses have been deposed against him under pressure of the policy party. He also denied to have demanded Rs.500/- from Heera Lal for measuring the Land which was allotted to him and has further denied that the said amount was recovered from his possession in presence of witnesses and has also stated that his implication in the present case is false.

8. The trial Court, after due consideration of submissions advanced by the counsel for the State as also the accused and the evidence on record, passed the judgment of acquittal dated 04.02.1999, under appeal.

9. Assailing the judgment under appeal, the learned counsel for the State submitted that the learned trial Judge has totally misread the evidence. He submits that evidence of P.W.1 and P.W.2 coupled with the medical evidence would show that the prosecution has proved the case beyond reasonable doubt.

10. Per contra, learned counsel for the respondent submits that the learned trial Judge by giving elaborate reasoning, found that the prosecution has failed to prove the case beyond reasonable doubt. He further submitted that, in an appeal arising from acquittal, the scope is limited. Unless the finding is shown to be perverse or impossible, it will not be permissible for the Appellate Court to interfere with the same.

11. Considered the submissions advanced by learned counsel for the contesting parties and perused the records.

12. Before proceeding further, it would be apt to indicate the law on the subject. In various pronouncements, it has specifically been observed that if on the basis of evidence on record two views are reasonably possible and one view has been taken by the trial Court in favour of the accused, then it should not be interfered unless the findings are perverse.

13. Hon'ble the Apex Court in a judgment in the case of **Sadhu Sara 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 be raised 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 not 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."*

14. It is to be noted that in criminal trial there is strict burden upon the prosecution to prove the case beyond reasonable doubt. Hon'ble Apex Court in the Case of Sujit Biswas Vs. State of Asam reported in 2013 (12) SCC, page 406 has held that reasonable doubt is not in imagination triable or a probable doubt, but a fair doubt that is based upon the reasons and common sense. The court ensure that mere conjecture and suspicion do not take place of legal proof. Clear, cogent and unimpeachable evidence produced by the prosecution is must before convicting the accused.

15. In the case of **Harljan Bhala Teja Vs. State of Gujarat** reported in **(2016) 12 SCC 665**, the Hon'ble Supreme Court held as under:

"No doubt, where, on appreciation of evidence on record, two views are possible, and the trial court has taken a view of acquittal, the appellate court should not interfere with the same. However, this does not mean that in all the cases where the trial court has recorded acquittal, the same should not be interfered with, even if the view is perverse. Where the view taken by the trial court is against the weight of evidence on record, or perverse, it is always open for the appellate court to express the right conclusion after re-appreciating the evidence if the charge is proved beyond reasonable doubt on record, and convict the accused."

16. In the light of the aforesaid principles embodied by the Hon'ble Supreme Court, while dealing with the judgment of acquittal by the appellate Court, this Court took note of the evidence produced before the trial Court.

17. From the record, it is apparent that all the three witnesses namely

Putti Lal (P.W.1, eye-witness), Bishram (P.W.2, eye-witness) and Ram Sundar Tiwari Deputy Supdt. Of Police (P.W.3, formal witness) were declared hostile.

18. P.W.1 Putti Lal, an eyewitness of the occurrence, denied the prosecution case that any demand was made by the accused Daya Shanker Agnihotri Lekhpal from Heera Lal, since deceased, for making measurement of his land in his presence. He was declared hostile by the prosecution case and learned State Counsel cross-examined him. In his cross examination this witness denied his statement under Section 161 CrPC recorded by the I.O. and stated that how the I.O. had recorded his statement he could not state. He also stated that search of the accused had not taken place in his presence and that the *fard* was prepared at the Police Station upon which he had been asked by the Police to put his signature and the Police had not read over to him the Fard Jama Talashi Paper no.5 (Ex Ka-3 and 5), over which he had made his signature.

19. Bishram (P.W.2), an eye witness of the occurrence, was also declared hostile. In cross examination, this witness stated I.O. had not recorded his statement and when his statement recorded under Section 161 CrPC was read over to him he denied to have given any such statement to the Investigating Officer. Regarding Fard he stated that he had made his signature on Plain Paper. He also stated that the accused was not arrested in his presence. He also denied the suggestion of the state counsel that he had been won over by the accused.

20. Ram Sundar Tiwari Deputy Supdt. Of Police (P.W.3) is a formal witness. He has investigated the case and after completing the investigation submitted chargesheet against the accused. No other evidence was brought on record by the prosecution in proof of the charge framed against the accused.

21. It is also to be noted that the informant/Heera Lal during the pendency of the trial died and accordingly, he could not be examined and the other witness of the prosecution namely Sri Lalit Kumar

Singh, Circle Officer, who lodged the FIR also could not be examined by the prosecution.

22. Upon due consideration of aforesaid including the observations of the Hon'ble Supreme Court, this Court is of the opinion and holds that the prosecution has failed to prove the charge under Section 7/13 Prevention of Corruption Act against the accused beyond all reasonable doubt before the trial Court and accordingly, the trial Court committed no error in passing the judgment dated 04.02.1999, under appeal, and accordingly, no interference is called for. Hence, the appeal is dismissed. No order as to costs.

23. Let the trial Court record be sent back.

Order Date :- 21.5.2024

Mohit Singh/-