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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Date of decision: 29.07.2015

State of Punjab

....Appellant

Versus

Jagtar Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?
- 2) To be referred to the Reporters or not ?
- 3) Whether the judgment should be reported in the Digest ?

Present: - Mr. D.S. Mann, DAG, Punjab.
Mr. Ranjan Lakhanpal, Advocate, for the respondent.

PARAMJEET SINGH, J.

Instant criminal appeal has been filed against the judgment dated 04.03.2006 passed by learned Special Judge, Patiala, vide which the respondent has been acquitted of the charges framed against him under Sections 7 and 13(2) of the Prevention of Corruption Act (hereinafter referred to as 'the PC Act').

Brief facts for disposal of the present case are that complainant Buta Singh son of Zora Singh made a statement before the Vigilance Bureau that on 04.02.2001, after doing some private work, he was on the way from Nabha to Patiala in Maruti Car No.PB-13C-0066. When he reached in front of Police Station Civil Lines, Patiala, respondent stopped his car and demanded ₹ 15,000/- otherwise threatened to

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implicate the complainant in false case under the Narcotic Drugs and Psychotropic Substances Act. When the complainant expressed his inability to pay the said amount, respondent took the keys of the car from the complainant. Ultimately, complainant agreed to pay ₹ 10,000/- to the respondent to get his car released from him. After reaching his village, on the advise of his co-villager Piara Singh, on 06.02.2001 complainant approached the office of Vigilance Bureau where the statement of the complainant was recorded. A raiding party was formed, which, after completion of necessary formalities, went to the specified place and caught the respondent accepting tainted money from the complainant. Respondent was formally arrested after disclosing the grounds of arrest. The nips of solution of handwash and of pant pocket wash were sent to Forensic Science Laboratory, Punjab, Chandigarh. On receipt of the report of Forensic Science Laboratory and after completion of other formalities of investigation, challan against the respondent under Sections 7 and 13(2) of the PC Act was prepared and presented before the Court.

On appearance of the respondent-accused, copies of report under Section 173 Cr.P.C. along with documents relied upon by the prosecution were supplied to him free of costs as required under Section 207 Cr.P.C. After going through the evidence and material collected during investigation, trial Court charge-sheeted the respondent for the commission of offence punishable under Sections 7 and 13(2) of the PC Act to which respondent pleaded not guilty and claimed trial.

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In order to prove its case, prosecution examined HC Inderjit Singh as PW1, C-II Swaran Singh as PW2, MHC Gurbhej Singh as PW3, ASI Ranjit Singh as PW4, Tarsem Singh Draftsman as PW5, Buta Singh complainant as PW6, Piara Singh shadow witness as PW7, Dr. Harbans Singh as PW8 and DSP Narinderpal Kaushal, Investigating Officer as PW9.

Statement of the respondent-accused was recorded under Section 313 of the Code of Criminal Procedure. The accused denied all the incriminating circumstances appearing against him in prosecution evidence and claimed to be innocent. However, he closed his defence evidence without producing any witness.

The trial Court after appreciation of evidence on record, acquitted the respondent of the charges framed against him. Hence, this appeal.

It is expedient to have a bird's eye view of the relevant prosecution witnesses hereunder: -

“(i) Draftsman Tarsem Singh PW5 deposed that he was joined as a member of the raiding party. On reaching the spot, Piara Singh gave a signal and police party reached at the spot. Accused was caught hold from the arms and ₹ 10,000/- were recovered from the side pocket of his pant. Thereafter they reached the office of Vigilance Bureau along with the accused and no other proceedings took place at the spot.

This witness in examination-in-chief has deposed that entire proceedings had taken place in Vigilance office.

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Thereafter he was declared hostile.

- (ii) Complaint Buta Singh PW6 deposed that car No.PB-13-C-0066 belonged to his brother and he was driving the same. On 04.02.2001 when he was coming from Nabha to Patiala in the said car accused Jagtar Singh met him near the workshop of PRTC and told that he had to obtain ₹ 12,000/- to ₹ 13,000/- from his brother. He (complainant) showed his ignorance regarding the debt of his brother. The accused demanded ₹ 12,000/- to release the said car and the matter was settled in ₹ 10,000/- to be paid on 06.02.2001 at Bhadson Octroi post. Complainant along with Piara Singh went to the office of Vigilance Bureau at Patiala. Raiding party went to the specified spot and he handed over the tainted notes to the accused.

On the request of the Addl. PP complainant was declared hostile.

In his cross-examination, complainant deposed that accused had not demanded any amount of illegal gratification from him. He had not paid the accused any amount nor any recovery was effected from the accused in his presence. He did not visit the Bhadson road nor trap was laid down their in his presence. Accused was not arrested in his presence nor recovery was effected in his presence. He further stated that Piara Singh is his cousin and he also remained in the office of Vigilance Department and he was not taken to Bhadson Road or Bhadson Road Octroi Post. His signatures were obtained in the office of Vigilance Department. Statement made by him (complainant) on the last date was given at the instructions of officials of Vigilance Department.

- (iii) Piara Singh PW7 deposed that Buta Singh told him regarding rounding up of car and demand of illegal gratification by the accused. They went to the office of Vigilance Department. He as a member of the raiding party went to Bhadson. The accused came on a scooter near the liquor vend. He demanded money, as settled by Buta Singh with the accused. Buta Singh handed over the money. He gave signal to the police party and accused was apprehended.

In his cross-examination Piara Singh stated that he was called from his village by Buta Singh by telling that he had to raise loan from the bank and he (Piara Singh) had to stand as a guarantee. Buta Singh had not told him that Jagtar Singh had demanded illegal gratification from him. He and Buta Singh were sitting in the office of Vigilance Department and accused was brought by the Vigilance officials in that office. Jagtar Singh never demanded any money nor any money was recovered from his possession. He and Buta Singh were not taken to Bhadson road or Bhadson Octroi Post. Accused was not arrested in his presence. No car was recovered from the accused in his presence. He was tortured by the Vigilance Department to give statement in the Court.”

I have heard learned counsel for the parties and perused the record.

Learned counsel for the State vehemently contended that the judgment passed by the trial Court is not proper, legal and is erroneous. Trial Court has not considered the evidence of the witnesses. Trial Court has failed to appreciate the fact that complainant specifically stated that

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accused demanded and accepted the tainted currency notes amounting to ₹ 10,000/-. Trial Court wrongly and illegally acquitted the accused on the ground that complainant and shadow witness did not support the prosecution version. Recovery of tainted notes from the accused is fully proved. As such the impugned judgment is liable to be set aside.

On the other hand, learned counsel for the respondent contended that respondent has been rightly acquitted by the trial Court. Prosecution has miserably failed to prove on record the demand and acceptance of illegal gratification by the respondent from the complainant. This appeal is liable to be dismissed.

I have considered the contentions raised by learned counsel for the parties.

Trial Court has acquitted the respondent on two grounds, firstly that the prosecution has failed to prove on record the demand of illegal gratification by the respondent-accused from the complainant and secondly there is no corroboration in the statements of the witnesses regarding place of recovery. PW6 Buta Singh complainant and PW7 Piara Singh shadow witness have categorically stated that accused never demanded any illegal gratification from the complainant nor the complainant paid any amount to the respondent-accused nor any recovery of tainted amount was effected from the possession of the respondent in their presence. The car of the complainant was also not recovered from the possession of the respondent in their presence. It is settled proposition of law that mere recovery of tainted money is not

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sufficient unless there was demand and conscious acceptance of bribe money by the accused. Therefore, the benefit of doubt must go to the accused.

The categorical statements of PW6 Buta Singh and PW7 Piara Singh are to the effect that respondent-accused was called to the office of Vigilance Bureau and the alleged recovery was planted against him while sitting in the office of Vigilance Bureau. PW5 Tarsem Singh, Draftsman, independent official witness of recovery categorically stated that the entire proceedings were conducted not at the spot but in the office of Vigilance Bureau, which makes the prosecution story highly doubtful.

It is a settled legal position that in appeal against acquittal, the appellate Court is not required to rewrite the judgment or to give fresh reasonings when the appellate Court is in agreement with the reasons assigned by the trial Court acquitting the accused. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial court while acquitting the respondent- accused and adopting the said reasons and for the reasons aforesaid, in my view, the impugned judgment is just, legal and proper and requires no interference by this Court at this stage. Hence, this appeal requires to be dismissed.

Even the Hon'ble Supreme Court in the case of ***State of Goa v. Sanjay Thakran and another, (2007)3 SCC 75***, has reiterated the powers of the High Court in such cases. In para 16 of the said decision the Hon'ble Supreme Court has observed as under:

"16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to reappraise the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with."

Similar principle has been laid down by the Hon'ble Supreme Court in the cases of ***State of Uttar Pradesh v. Ram Veer Singh and others, 2007 AIR SCW 5553*** and in ***Girja Prasad (Dead) by LRs v. State of MP, 2007 AIR SCW 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

It is also a settled legal position that in appeal against acquittal, the appellate Court is not required to rewrite the judgment or to give fresh reasonings, when the reasons assigned by the Court below are found to be just and proper. Such principle is laid down, by the Hon'ble Supreme Court in the case of State of ***Karnataka v. Hemareddy, AIR***

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1981 SC 1417 wherein, it is held as under:

*"... This court has. observed in **Girija Nandini Devi v. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124)** that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."*

Thus, in case the appellate Court agrees with the reasons and the opinion given by the lower Court, then the discussion of evidence is not necessary.

I have gone through the judgment passed by the trial Court. I have also perused the oral as well as documentary evidence led before the trial Court and also considered the submissions made by learned counsel for the State. The trial Court while considering the oral as well as documentary evidence has clearly observed that the prosecution has failed to prove its case beyond reasonable doubt. Even in the present appeal, nothing is produced or pointed out to rebut the conclusion of the trial Court. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

The Hon'ble Supreme Court in **Muralidhar @ Gidda & Anr. vs. State of Karnataka** 2014(2) RCR (Criminal) 507 has held as under:

"10. Lord Russell in Sheo Swarup vs. King Emperor [AIR 1934 Privy Council 227] highlighted the approach of the High Court as an appellate court hearing the appeal against

acquittal. Lord Russell said, “the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.” The opinion of the Lord Russell has been followed over the years.

*11. As early as in 1952, this Court in **Surajpal Singh v. State**; [AIR 1952 SC 52], while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed, “the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”*

*12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in **Tulsiram Kanu v. State**; [AIR 1954 SC 1], **Madan Mohan Singh v. State of U.P.**; [AIR 1954 SC 637], **Atley v. State of U.P.**; [AIR 1955 SC 807], **Aher Raja Khima v. State of Saurashtra**; [AIR 1956 SC 217], **Balbir Singh v. State of Punjab**; [AIR 1957 SC 216], **M.G. Agarwal v. State of Maharashtra**; [AIR 1963 SC 200], **Noor Khan v. State of Rajasthan**; [AIR 1964 SC 286], **Khedu Mohton v. State of Bihar**; [(1970) 2 SCC 450], **Shivaji Sahabrao Bobade v. State of Maharashtra**; [(1973) 2 SCC 793], **Lekha Yadav v. State of Bihar**; [(1973) 2 SCC 424],*

Khem Karan v. State of U.P.; [(1974) 4 SCC 603], Bishan Singh v. State of Punjab; [(1974) 3 SCC 288], Umedbhai Jadavbhai v. State of Gujarat; [(1978) 1 SCC 228], K. Gopal Reddy v. State of A.P. ; [(1979) 1 SCC 355], Tota Singh v. State of Punjab [1987(2) R.C.R.(Criminal) 35: (1987) 2 SCC 529], Ram Kumar v. State of Haryana; [1994(3) R.C.R. (Criminal) 631 : 1995 Supp (1) SCC 248], Madan Lal v. State of J&K; [1997(4) R.C.R.(Criminal) 89: (1997) 7 SCC 677], Sambasivan v. State of Kerala; [1998(2) R.C.R. (Criminal) 693 : (1998) 5 SCC 412], Bhagwan Singh v. State of M.P.; [2002(2) R.C.R.(Criminal) 593 : (2002) 4 SCC 85], Harijana Thirupala v. Public Prosecutor, High Court of A.P.; [2002 (3) R.C.R.(Criminal) 861 : (2002) 6 SCC 470], C. Antony v. K. G. Raghavan Nair; [2002(4) R.C.R.(Criminal) 750 : (2003) 1 SCC 1], State of Karnataka v. K. Gopalakrishna; [2005(2) R.C.R.(Criminal) 20 : (2005) 9 SCC 291], State of Goa v. Sanjay Thakran; [2007(2) R.C.R. (Criminal) 458 : (2007) 3 SCC 755] and Chandrappa v. State of Karnataka; [2007(2) R.C.R.(Criminal) 92: 2007(1) Recent Apex Judgments (R.A.J.) 841: (2007) 4 SCC 415]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of

fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.”

Learned counsel for the appellant has failed to show any error in law or on facts on the basis of which interference can be made by this Court in the judgment under challenge.

Dismissed.

(Paramjeet Singh)
Judge

July 29, 2015
R.S.