

CRA-S-37-SBA-2003

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-37-SBA-2003 (O & M)

Date of decision: 01.04.2015

State of Haryana

.... Appellants

Versus

Baldev Raj

.... Respondent(s)

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. Rajesh Gaur, Addl. A. G. Haryana.

Mr. P.S.Hundal, Sr. Advocate with
Mr. Jashandeep Singh, Advocate,
for the respondent.

PARAMJEET SINGH, J.

The present criminal appeal has been preferred against the judgment dated 26.03.2002 passed by the Chief Judicial Magistrate, Panipat whereby respondent-accused (for brevity, 'accused') has been acquitted of the charge framed against him under Section 16(1) (a) (i) of Prevention of Food Adulteration Act, 1954 (for brevity, 'the Act').

Brief facts of the case are to the effect that on 12.04.1995,

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Sh. D.K.Sharma, Govt. Food Inspector along with Dr. V.K.Malhotra, District Health Officer, Panipat inspected the premises of accused at Panipat. The Govt. Food Inspector purchased 450 grams of Lal Mirchi Powder from the accused for a price of Rs.18/- only after serving him with a notice in Form No.VI. The sample was divided into three equal parts and put into separate dry bottles. The said bottles were duly sealed, as per procedure laid down under the Act. A bottle of sample along with memorandum in Form No.VII was sent to Public Analyst, Haryana for analysis. Remaining two bottles of sample were deposited with Local Health Authority, Panipat. The report of Public Analyst, Haryana indicated that the sample was sent in a glass bottle and not in a packed container, as per rules. The report further stated that eight dead insects as well as rice starch were discovered in the sample. The sample was also found coloured with added prohibited red oil soluble coaltar dye. A copy of the said report was sent to accused by registered post by Local Health Authority, Panipat. The Govt. Food Inspector launched prosecution against the accused by filing the complaint under Section 7/16 of the Act.

The accused was summoned and admitted to bail. On the basis of pre-charge evidence, the accused was charge-sheeted under Section 16(1) (a) (i) of the Act.

In after-charge evidence, the complainant tendered into evidence the deposition of Sh. D.K.Sharma, Govt. Food Inspector, recorded by way of pre-charge evidence. The complainant also

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examined Dr. V.K.Malhotra, Medical Officer as PW 2 and Mani Ram, Steno, Local Health Authority, Panipat at PW 3.

Statement of accused under Section 313 Cr.P.C. was recorded. All the incriminating evidence appearing against the accused was put to him. He denied the same and pleaded false implication.

The trial Court, vide impugned judgment dated 26.03.2002, acquitted the accused of the charge framed against him under Section 16 (1) (a) (i) of the Act. Hence, this appeal.

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

Learned State counsel vehemently contended that the trial Court has gravely erred while acquitting the accused on account of non-compliance of Rules 17 and 18 of the Prevention of Food Adulteration Rules, 1955. Learned State counsel further contended that the rules have been fully complied with in the case in hand. The report of public analyst with specimen impression of the seal contained on the container of the sample was tallied with the specimen of seal separately sent by the Govt. Food Inspector. Learned State counsel further contended that it is not rule of law that evidence of Food Inspector cannot be accepted without corroboration.

Per contra, learned senior counsel for the accused vehemently opposed the contentions of learned counsel for the petitioner and supported the impugned judgment.

I have considered the rival contentions of learned counsel for

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the parties.

There is a procedure in the Act and the Rules made thereunder with regard of taking samples, their packing and sealing, sending them for analysis, as also regarding carrying out of analysis by the Public Analyst, the Government, while issuing the Order did not feel any necessity of prescribing a separate procedure for these purposes.

In WP.(Crl.).No.1511/2009, tiled '**Yogender Singh & Ors. vs. State & Another**', decided on 19.02.2010, the Delhi High Court has held as under:

“12. Rule 14 of the PFA Rules which prescribes the manner of sending sample for analysis reads as under:

“Manner of sending sample for analysis - Samples of food for the purpose of analysis shall be taken in clean dry bottles or jars or in other suitable containers which shall be closed sufficiently tight to prevent leakage, evaporation, or in the case of dry substance, entrance of moisture and shall be carefully sealed.”

13. Rule 16 of the rules which prescribes the manner of packing and sealing samples, to the extent it is relevant, reads as under:

*“16. Manner of packing and sealing the samples: - all samples of food sent for analysis shall be packed, fastened and sealed in the following manner namely:-
(a) The stopper shall first be securely fastened so as to prevent leakage of the contents in transit;”*

14. Admittedly, the officers who took samples from the truck as well as from the godowns of FCI used polythene bags for the purpose of keeping the wheat drawn as sample. As noted by the Public Analyst, all the polythene bags were loose when received by him. The contention of

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*the petitioner is that polythene bag was not a suitable container envisaged in Rule 14 and the provisions of Rule 14 being mandatory, the prosecution is liable to be quashed on this ground alone. In support of his contention, the learned counsel for the petitioners has referred to the decision of a Full Bench of Punjab & Haryana High Court in “**State of Punjab Vs. Raman Kumar**”, 1998 CrL.L.J. 737, and the decision of the Gujarat High Court in “**State of Gujarat Vs. (2008) 1 PFAC 397 (Gujarat)**.”*

15. *In the case of **Raman Kumar(supra)**, sample of red chilly powder was taken in a wrapper of strong thick paper. The issue before the Full Bench of the High Court was as to whether a polythene containers or a wrapper of strong thick paper were covered under the definition of other suitable container', given in Rule 14 of the Rules. The High Court, after examining the Scheme of the Rules held that container or a wrapper of strong thick paper does not confirm to definition of container given in Rule 14. During the course of judgment, the High Court, inter alia, observed as under:*

“The only point to be determined is as to whether a polythene container or a wrapper of strong thick paper can be called suitable containers as defined in Rule 14 of the Rules. Rule 14 provides that samples of food for the purpose of analysis shall be taken in clean dry bottles or jars or in other suitable container, which shall be evaporation, or in the case of dry substance, entrance of moisture and shall be carefully sealed. A reading of the rule gives us a clear impression that other suitable containers mentioned in the rule connotes that it should be as hard as bottles and jars and also could be closed sufficiently right to prevent leakage, evaporation and in the case of dry substance entrance of moisture. The words bottles and jars are generally understood as closed bottles or

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glass jars.

When interpreting other suitable containers, the provisions contained in Rule 14 of the Rules have to be read as a whole and the words suitable container takes the hue from the words used in the rule itself. The words bottles or jars mentioned before other suitable container in Rule 14 itself indicates that a suitable container should be as hard as a closed bottle or as a glass jar. The expression used in Rule 16(a) which reads as under: -

“16(a) The stopper shall first be securely fastened so as to prevent leakage of the contents in transit.” is so indicative of the fact that the container stipulated in Rule 14 will have a stopper also. With the advancement of time some other containers are also available which are as hard as closed: though they may be made of some other hard substance like tin, hard plastic or other material like the one in which we get tooth paste, cream etc. In sum and substance a suitable container as defined in Rule 14, should be of an impervious character which should be closed sufficiently tight and carefully sealed to prevent leakage, evaporation or entrance of moisture.

The polythene bags or a thick paper have got a chance of being pierced. They are most susceptible to moisture, rodents, pests and can even burst with a little more pressure put on them. Such type of containers are not in a position of being closed tightly to prevent leakage etc. A thick paper packet has the chance of even being completely wet and again is unable to prevent entering moisture into it. There are every chances of such type of containers being affected as stated above not by design but even by chance when in transit i.e. after the sample is taken by the Food Inspector in such containers and thereafter it reaches the laboratory for final analysis.

The legislature in its wisdom has used the expression a suitable container in Rule 14. This

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expression must be given its cogent and reasonable meaning on the one hand and should be interpreted in a manner so as to ensure the implicit protection available to an accused under these provisions on the other hand. Suitably of a container emphasis the need that such a container should be one which would prevent leakage, evaporation and entrance of moisture. In other words, suitable container must also exclude the possibility of its being tampered with in the ordinary course of nature. Once the container satisfies these conditions it would be a suitable container and then the concerned Inspector is obliged to satisfy the requirements of Rule 16 of the Rules with regard to collection and sealing of the sample.

16. *The High Court found itself in disagreement with the view taken by Andhra Pradesh High Court in “**Food Inspector Bhimvaram Municipality Vs. Kopouravari Venkateswarulu**”, 1994 CrL. L.J. 414, which had taken a view that a polythene bag was a suitable container. I Find myself in full agreement with the view taken by Punjab & Haryana High Court as regard nature of the container envisaged in rule 14 of the Rules. The polythene bag, if used for keeping the sample of foodgrains, runs the risk of its getting torn or otherwise damaged, particularly while in transit. In fact, such bags may get damaged or torn even while they are in the custody of the Local Health Authority or they are in Malkhana, as the case may be. If that happens, there is a strong possibility of moisture etc. entering the bag thereby affecting the quality of the food article kept in it. Entry of moisture may result in rendering a food substance such as wheat, unfit for human consumption. If the bags are torn or damaged that may facilitate entry of pests etc. in the bags, thereby rendering them unfit for consumption and becoming adulterated product within the meaning of the Act. Since Rule 16 of the*

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Rules specifically provides for fastening of the stopper of the container used for keeping the sample and there being no stopper in polythene bag compliance of this requirement will not be possible and, therefore, this could never have been the intention of the legislature to treat polythene bags as a 'suitable container' within the meaning of Rule 14 of the Rules.

17. *The next question which comes for consideration is whether contravention of Rule 14 by itself, without anything more, is a good ground for quashing the prosecution at the very threshold. The contention of learned counsel for the petitioner was that the provisions of Rule 14 being mandatory, the petitioners need not show any prejudice to them on account of its breach and the prosecution is liable to be quashed on this ground. In support of his contention that the provisions of the Rules are mandatory, the learned counsel for the petitioners has relied upon the decision in the case Champa Lal (supra), where it was found that the vessel had not been cleaned and it was observed by the High Court that Rule 14 of the Rules was a mandatory provision.*

18. *The counter argument can be that if there was no damage to the polythene bag used for keeping the sample of wheat and, consequently, no prejudice was caused to the petitioners on account of such bags being used as containers, it will not be appropriate to let a person accused of such a serious offence go scot free merely on account of violation of this Rule.*

19. *It would be appropriate to note here that when the Public Analyst examined the samples sent to him, he found not only insect-infestation and fungus-infestation, he also found other extraneous and foreign matters*

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(unorganic), including mineral matters besides damaged grains exceeding the prescribed percentage in some of the samples. These foreign and extraneous things, including damaged grains, could not have entered the wheat only on account of its having been kept in polythene bags, when the bags were not found torn, damaged or pricked when they were received by the public analyst.

20. *Rule 14 of the PFA Rules not only prescribes use of dry bottles, jars or other suitable containers for taking samples, it also requires the container to be dry at the time sample is kept in it, besides requiring it to be closed sufficiently tight in order to ensure that there is no leakage, evaporation, etc. and in the case of dry substance, moisture does not enter the container on account of its not being properly closed. The purpose behind these safeguards is to ensure that the sample of food article sent for analysis is not rendered adulterated merely on account of the nature of the container used for this purpose or its not being dry or its being improperly closed. It would, in my view, be necessary for the accused to show not only the contravention of the rules but also the prejudice which may have been caused to him on account of the contravention. It would not be in the interest of justice to acquit an accused or quash proceedings against him merely on account of a theoretical contravention of rule 14 even if no prejudice is possibly have been caused to the accused on account of such a contravention. The aim and objective behind enactment of PFA Act being to ensure that human life and health is not endangered on account of consumption of adulterated food, the person accused of adulteration should not be let off merely on account of technical contravention when it has not resulted in any*

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prejudice to the accused.

21. *The food article in this case being wheat, leakage, if any, from the polythene bags could not have resulted in adulteration such as presence of extraneous and foreign matters, including mineral matters, besides damaged grains in the samples. Of course, if moisture enters the polythene bag in which the wheat is kept, that also may make it adulterated on account of the percentage of moisture exceeding the limit prescribed in this regard. But, in the present case, the moisture was found within the permissible limit in all the samples analysed in the Laboratory. Even if the percentage of moisture is found higher than the prescribed limit, and the excess moisture is attributed to improper or of insufficiently closing of the bags, the petitioners would still be guilty of adulteration on account of presence of other extraneous and foreign matters, including the mineral matters, besides damaged grains, exceeding the prescribed percentage in some of the samples. In the case of Champa Lal(supra), the vessel in which sample was taken having not been properly cleaned, the adulteration found in the sample could be attributed to the dirty vessel used for taking the sample. But, in the case of a solid substance such as wheat, no prejudice is caused to the accused merely on account of use of polythene bags when the bag sent found to be torn or damaged and the adulteration found in the Laboratory cannot be attributed to use of such a bag or its being inadequately tightened. It would also be pertinent to note here that though as per the Report of Public Analyst, the polythene bags received by him were loose, we do not know, at this stage, whether or not, the bags were loose to such an extent that moisture could have entered the bags, thereby rendering the samples*

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unfit for human consumption. This is a matter which can be answered only by the Public Analyst when he comes in the witness box, but more importantly, the moisture found in the samples being within the prescribed limit and the presence of foreign extraneous matters, including mineral matters and damaged grains not being attributable to use of polythene bags, it would be difficult to quash proceedings merely on account of the technical violation of Rule 14 by use of polythene bags instead of solid containers such as a bottle or a jar.

Contravention of Rule 18

22. *Rule 18 of the Prevention of Food Adulteration Rules, 1955 reads as under:*

“18. Memorandum and impression of seal to be sent separately. A copy of the memorandum and specimen impression of the seal used to seal the packet shall be sent, in a sealed packet separately to the Public Analyst by any suitable means immediately but not later than the succeeding working day.”

23. *The Public Analyst has specifically recorded in all his Reports that the sample was received with a seal of Inspector whose impressions had not been sent separately and the number written on the polythene bag was illegible. This is not the case of the prosecution that in fact the seal impression were separately sent to the Public Analyst and that the endorsement made by the Public Analyst in this regard is not correct.*

24. *The learned Additional Standing Counsel pointed out that there was a slip inside the samples, as has been noted by the Public Analyst and the Specimen Seal Impressions may have been given by the Investigating Officer on those slips. A perusal of the Report would show*

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that the Public Analyst has not recorded anywhere as to whether there were any specimen seal impression on the slips found inside the samples and, if so, what those seal impression were. Presuming that the slips kept inside the samples contained specimen seal impressions, it is obvious from the Report of the Public Analyst that he did not compare those impressions with the seal impressions found on the samples received by him. In any case, once the bags containing wheat samples were opened by the Public Analyst, the seal impressions put on the bags would necessarily be destroyed and, therefore, it is not possible for him to compare the seal impressions on the polythene bags with the specimen seal impressions found on the slips kept inside the samples. The rule making Authority was very much conscious of this aspect when it prescribed that the seal impressions will be sent separately to the Public Analyst in a sealed cover and the Public Analyst will compare the seal impressions on the samples with the specimen seal impressions sent separately to him. It is not possible for the Public Analyst to abide by the mandate of the rule unless the specimen seal impressions are received by him before he opens the bags containing the samples sought to be analysed by him.

25. As regards the necessity of sending the specimen seal impressions separately from the samples, the Hon'ble Supreme Court in **“State of H.P. Vs. Narendera Kumar & Another”**, (2004) 4 SCC 567, *inter alia*, observed as under:

“...The expression 'separately' has to be understood on a conjoint reading of Rules 7, 17 and 18, Rule 7 postulates that Public Analyst on receipt of the packet containing the sample for analysis has to compare the seals on the

container and the outer cover with specimen impression received separately and has to note the condition of the seals thereon. Reading Rules 17 and 18 together, it is clear that the word "separately" used in Rule 18 has been intended to convey the sense that the copy of the memorandum and the specimen impression of the seal has to be sent independently of the articles that are required to be sent under Rule 17....."

26. *The purpose of prescribing that the specimen impression of the seal used to seal the packet will be sent separately to the Public Analyst and that too in a sealed cover, by the succeeding working day, is to ensure that the sample which reaches the Public Analyst for the purpose of carrying out analysis, is the very same which was taken by the Inspector, on the spot. Unless the specimen impression of the seal are sent to the Public Analyst, he cannot compare them with the seal impression found on the sample received by him. Consequently, it cannot be said with certainty that the samples sent to the Public Analyst were the same which were lifted by the Inspector from the spot.*

27. *No doubt, one can argue that it is possible for the prosecution to produce the Inspector and other officials to prove that the samples which were duly sealed on the spot, were kept by them in safe custody and there was no tampering with the seals before the sample reached the Public Analyst. It can also be contended that the Inspector being a public servant there can be no reason for him to tamper with the seals and replace the product kept inside the container. Rule 7.(1) of PFA Rules specifically stipulates that on receipt of a package, containing a sample for analysis from Food Inspector or any other person, the Public Analyst or an officer authorized by him shall*

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compare the seals on the containers and the outer cover with specimen impression received separately and shall note the condition of the seals thereon. The legislative intent, as gathered from Rule 7 when read with Rule 18, obviously is not to rely solely upon the testimony of the Inspector, to ensure that there was no reasonably possibility of the sample having been tampered with, by removing the seals. The Public Analyst being an independent person, the rule making Authority, in its wisdom, chose to seek confirmation from him by requiring him to compare the seals on the container and the outer cover with the specimen seal impressions required to be sent separately to him in a sealed cover. If the Court relies solely upon the testimony of the Inspector in this regard, it would not be in consonance with the mandate of the Rules and would nullify the provisions contained in rule 7.(1) of PFA Rules. The cases of prosecution for adulteration cannot, in this regard, be treated at par with the cases such as prosecution under NDPS Act where there is no statutory requirement of sending the specimen seal impressions to the Laboratory separately, in a sealed cover, and requiring the Analyst to compare the seal impressions on the sample with the Specimen Seal Impressions received by him, it is only as a matter of prudence and caution that the court normally insists upon the prosecution proving that the specimen seal impressions were sent to the Laboratory and the seal impressions on the samples and the Specimen Seal Impressions were one and the same. Considering the object, which is sought to be achieved by insisting upon sending the Specimen Seal Impressions to the Public Analyst in a separate sealed cover, and then requiring the Public Analyst to compare the seals on the container and

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outer container with the seal impressions received separately and to note the condition of the seals thereon, the provisions of Rule 18 are mandatory in nature and such contravention of this rule by itself would lead not only to acquittal but, in appropriate cases, also to quashing of the criminal proceedings instituted against the accused. The prejudice to the accused in case of such a contravention is implicit in the contravention itself, since the possibility of replacing of the sample after tampering with the seals cannot be ruled out in such a case.

28. In **“State (through Drugs Inspector, Delhi Administration) Vs. Hukam Chand”**, CrI.A.177/82 decided by this Court on 21st September, 2007, the Report of Public Analyst did not specify whether he had compared the seals on the sample bottles with the specimen seal impression sent to him separately. It was held by the trial court that it could not be said with certainty whether the samples analysed by them were the same samples which had been collected from the accused. The view taken by the High Court was endorsed by this Court which also observed that the Report received from the Government Analyst in violation of the Rule will not be a worthy piece of evidence for the purpose of criminal prosecution.

29. In **“State of Maharashtra Vs. Raj Karan”**, 1987 (Supp) SCC 183, the respondent was acquitted on the ground that Rule 18 of PFA Rules was mandatory and there was non-compliance of the requirement of the Rule. In that case, the case of the prosecution was that the memorandum and the specimen impressions of the seal used to seal the bag were sent by registered post to the Public Analyst. In the absence of postal receipt, the appellate court did not believe the version of prosecution

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in this regard. The finding given by the appellate court was that the prosecution had failed to establish that the memorandum and specimen impressions of the seal had separately been sent to the Public Analyst. Accepting the contention of the respondent that the requirement of the Rule was mandatory, the Hon'ble Supreme Court held that since there was non-compliance of the requirement, the prosecution had to fail. The acquittal of the respondent was, accordingly, held justified. In the present case, the prosecution does not even claim to have sent the Specimen Seal Impression to the Public Analyst. Hence, the case of the petitioners stands on a stronger footing. Therefore, I have no hesitation in holding that since the provisions of Rule 18 are mandatory and the prejudice to the petitioners is inherent in the very contravention of this nature, the prosecution is liable to be quashed on this ground alone. No useful purpose will be served from continuing the criminal proceedings when the fate of the trial is known at the very outset and the trial, if allowed to proceed, will only be a mock trial, at the end of which the petitioners are bound to be acquitted on account of breach of this mandatory requirement of PFA Rules.”

The trial Court has rightly held that it is mandatory for prosecution to establish the despatch of a copy of the memorandum along with the specimen impression of the seals used to seal the sample of accused to the Public Analyst separately. The Trial Court has rightly relied upon ***Raj Karan's case (supra)*** where it is held that where the documents are sent by registered post, prosecution must establish such despatch by production of requisite postal receipt before the court. In

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the present case, no such postal receipt has been produced on behalf of the complainant to establish the despatch of such documents by registered post. The trial Court has also rightly held that in view of Section 10(7) of the Act, it was mandatory for the Food Inspector to join one or more independent witness at the time of taking of sample from the accused. Admittedly, one witness, namely, Rohtash, was joined during the investigation by Food Inspector, but he has been intentionally given up by the Food Inspector at the time of evidence. The Govt. Food Inspector on behalf of the complainant failed to explain as to why the said independent witness has been withheld from the Court. In this regard, reliance can be placed upon ***State of Punjab vs. Balwant Singh*** 1992(1) Prevention of Food Adulteration Cases 239.

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

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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*

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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

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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 State counsel 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.

As such, instant appeal is dismissed being devoid of merits.

(PARAMJEET SINGH)
JUDGE

01.04.2015
parveen kumar