

In the High Court of Punjab and Haryana at Chandigarh

Crl. Misc. No. A-788-MA of 2013
Date of Decision: 10.2.2015.

Krishna

.....Applicant

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Ravi Sharma, Advocate
for the applicant.

SABINA, J.

Respondent No. 2 had faced trial in a complaint filed by the complainant under Section 324/506 of the Indian Penal Code, 1860. Trial Court vide order dated 1.4.2013 ordered the acquittal of respondent No. 2. Hence, the present application under Section 378(4) of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) praying for leave to appeal by the applicant-complainant.

I have heard the learned counsel for the applicant and have gone through the record available on the file carefully.

Case of the applicant, in brief, was that on 20.2.2007, she was returning from the fields at about 4.00 P.M. Respondent No. 2 met her on the way near his fields and caught hold of the applicant from her arms and tried to outrage her modesty. When the applicant raised hue and cry, Jai Bhagwan, Hari Chand and Ram Kumar-her husband reached the spot and rescued her.

The Trial Court while ordering the acquittal of

respondent No. 2 has held as under:-

“15. As per case of complainant, when accused tried to outrage her modesty, then she was rescued from his clutches by her husband Ram Kumar, Jai Bhagwan and one Hari Chand. Said Jai Bhagwan has never appeared before this Court to prove the version of complainant whereas Hari Chand and Ram Kumar have not stepped into the witness box for their cross-examination in their pre charge evidence. This fact also creates doubt about the story propounded by the complainant. Moreover, from the perusal of complaint given by complainant to the police office i.e. Ex.C1 to Ex. C3, it is observed that it is nowhere mentioned in those complaints by the complainant that she was rescued from the clutches of accused by her husband Ram Kumar, Jai Bhagwan and Hari Chand. She categorically mentioned in her complaints Ex. C1 to Ex. C3 that she herself tried to rescue herself from the clutches of accused. This fact also shows that the story put forth by the complainant has no substance. She also disclosed in her pre-charge evidence that police did not take any action on the complaint moved by her whereas document Ex. C4 placed on Court file itself shows that police had visited the spot, recorded the statements of respectables of village and found that no such type of incident had ever taken place. Though there was a dispute between the complainant and accused, as such, accused was challaned under Sections 107/151 Cr.P.C. by the police of Police Station Shahabad.

Moreover, this fact is also certified from the testimony of Ram Kumar that when the police went to village on the complaint given by her wife, then, the alleged occurrence was not confirmed by any of the villagers.

16. Moreso, testimony of Hari Chand is also not trustworthy as he is a resident of Shahabad and as per his version he was very much present at the time when the alleged occurrence took place. In his preliminary evidence, he disclosed this fact that husband of complainant is known to him as he wanted to sell his land through him because he is a property dealer but when he stepped into the witness box in after charge evidence, he deposed that Krishna is known to him for the last three months and the husband of complainant being disabled person is not in a position to do any work and he is a poor person. All these facts raised doubt in the mind of Court that this witness has been involved just to give a coloured version to the story of complainant. ”

The reasons given by the Trial Court while ordering the acquittal of respondent No. 2, are sound reasons. Complainant had made material improvements while filing the complaint. In fact, in the complaint moved by the complainant to the police, she had not taken the plea that she had been rescued by her husband Ram Kumar, Jai Bhagwan and Hari Chand whereas while filing the complaint before the Court, complainant took up the plea that she had been rescued by the said persons from the clutches of the accused. Dispute between the complainant and accused was pending under Section 107, 151 Cr.P.C. Police had visited the spot

and had recorded the statements of the witnesses and had found that no occurrence, as alleged in the complaint, had taken place.

Learned counsel for the applicant has failed to point out any misreading of evidence by the Trial Court which would warrant interference by this Court.

Their lordships of the Supreme Court in **Allarakha K. Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748**, held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

A Division Bench of this Court in **State of Punjab v. Hansa Singh, 2001 (1) RCR (Criminal) 775**, while dealing with an appeal against acquittal, has opined as under:

“We are of the opinion that the matter would have to be examined in the light of the observations of the Hon'ble Supreme Court in *Ashok Kumar v. State of Rajasthan*, 1991(1) SCC 166, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.”

To the same effect is the ratio of the judgments of the Supreme Court in **State of Goa v. Sanjay Thakran (2007) 3 SCC 755** and in **Chandrappa v. State of Karnataka, (2007) 4 SCC 415**.

Similarly, in **Mrinal Das & others v. The State of Tripura, 2011 (9) Supreme Court Cases 479**, the Supreme Court, after looking into various judgments, has laid down parameters, in

which interference can be made in a judgment of acquittal, by observing as under:

“8) It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal

is to be interfered with only when there are “compelling and substantial reasons”, for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed”

No ground is made out to grant leave to file an appeal.

Accordingly, this application is dismissed.

**(SABINA)
JUDGE**

February 10, 2015
Gurpreet