IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-806-MA of 2013 (O&M)
Date of Decision: ***April 27, 2015***

Suraj Bhan

.... Applicant/appellant

VERSUS

Ashwani Kumar and others

....Respondents

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: - Mr. Shailendra Sharma, Advocate, for the applicant/appellant.

. . .

1. **Whether Reporters of 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?**

JASPAL SINGH, J
CRM No. 41428 of 2014

In view of averments made in the application, the same is allowed and delay in filing the instant application is condoned.

CM stands disposed of.

CRM Nos. 41427 and 39756 of 2014

Applications are allowed, as prayed for.

Annexures A-1 and A-6 are taken on record, subject to all just exceptions.

CRM-A-806-MA of 2013

Aggrieved against order dated September 10, 2012 passed by learned Sub Divisional Judicial Magistrate, Narwana, Jind whereby, respondents have been acquitted of the charge in a criminal case No. 76/1 dated May 19, 2006 captioned as Suraj Bhan vs. Ashwani Kumar and another, under Sections 406, 420, 120-B, 468 and 471 IPC, Suraj Bhan has preferred the instant application under Section 378(4) Cr.P.C. seeking grant of leave to appeal.

2. In nut shell, the case of complainant is that he is an agriculturist by profession and was in need of a tractor and other agricultural implements. On December 30, 2015, he alongwith his cousin Dalbir Singh contacted respondent No.1-Ashwani Kumar and respondent No.2-Subhash, who are proprietor/salesman respectively of M/s Pall Motor & Tractor, Narwana for the purchase of a tractor. For that purpose, both respondents obtained his signatures on various forms and blank papers and got sanctioned a loan to the tune of ₹4,50,000/- from P.A.R.D. Bank, Narwana. A tractor was purchased in the name of complainant on receipt of ₹4,50,000/-. A sum of ₹2713/- was also deposited by complainant in cash. Accused also got his photographs with tractor. Since, respondents were having dishonest intention to cheat the complainant, they promised to give the delivery of tractor and implements in the last week of January 2006, as tractor on which his photographs were taken was of 2005 model. Neither, respondents delivered a tractor nor its implements to complainant till date and thereby, committed cheating and fraud with him. Subsequently, he came to know that necessary papers have been furnished by respondents

before Registering Authority, Narwana for preparation of registration certificate in his name. Thus, respondents cannot sell the tractor in question to someone else on the basis of papers already got signed by them from complainant. Since, police did not take any action on a complaint lodged by complainant, he was constrained to file a regular complaint before learned Jurisdictional Magistrate.

3. On the strength of preliminary evidence adduced by complainant-Suraj Bhan, both respondents were summoned to face trial under Sections 406 and 420 IPC read with Section 34 IPC by learned Magistrate vide order dated August 21, 2014. In compliance of the said order both respondents appeared and joined proceedings. Similarly, on the strength of evidence brought on record at pre-charge stage there being, a *prima facie* evidence, both respondents were charge sheeted for the commission of offences punishable under Sections 406 and 420 read with Section 34 IPC vide order dated July 13, 2012, to which they plead did not guilty and claimed trial.

4. However, after hearing learned counsel for the parties and appraisal of evidence brought on record by the complainant-Suraj Bhan, both respondents were acquitted of the charge vide impugned order dated September 19, 2012. Aggrieved against the said order, complainant-Suraj Bhan, preferred instant application seeking grant of leave to appeal.

5. While assailing impugned order, it has been ebulliently argued by learned counsel for the applicant/complainant that learned trial Court did not appreciate the fact that it was a specific case of

complainant through out trial that at the time of preparation of documents for the purpose of sanctioning of loan, his signatures were obtained on various forms as well as on blank papers, which were subsequently used for the purpose of advancement of loan as well as registration of tractor. The complainant was not cross-examined on this point at any stage by learned counsel for the accused. Thus, his statement to this effect remained unrebutted and unchallenged, which has been ignored and disbelieved by learned trial Court without any rhyme and reason. The learned trial Court while passing impugned order of acquittal of respondents has mainly relied upon documents Ex.D1 to D-4, which have been misused by respondents and were obtained at the time of advancement of loan. Similarly, learned trial Court has also wrongly given much importance to the delay of five months in filing the complaint. In this regard, it is submitted that learned trial Court did not appreciate the fact that applicant/complainant visited respondents on December 13, 2005 when he was assured that he will be delivered the tractor of 2006 model in the last week of January 2006. But when respondents failed to deliver the possession of tractor despite repeated visits and requests, complainant at first instance approached the police and when police failed to register FIR against respondents, then he was left with no option to file a complaint before learned Jurisdictional Magistrate, which was lodged by him on April 19, 2006. Moreover, case of complainant is entirely based upon documentary evidence and delay if any is not of much reliance. Learned trial Court also did not appreciate the fact that no motor vehicle is released from agency till the same is insured and liability of getting vehicle insured is/was on the owner of agency i.e. respondent No.1. It was also the liability of owner to issue temporary registration number of vehicle sold by him. In the instant case neither respondents could place on record insuance of tractor at the time of alleged delivery nor the issuance of any temporary registration number, which itself creates a doubt about the authenticity of documents Ex.D1 to D4 as well as claim of respondents that tractor in question was delivered to applicant by them. In fact, misappreciation of documents available on file by learned trial Court has resulted into the acquittal of accused, which is otherwise not sustainable in the eyes of law. Thus, there are sufficient grounds for granting leave to appeal to the complainant.

6. Before delving deep into the merits of the case, it would be desirable to evaluate the scope and jurisdiction of the appellate court to meddle with the conclusion arrived at by learned trial Court while discharging the accused which indirectly amounts to acquittal.

7.. After survey of the earlier pronouncements on the subject, Hon'ble Apex Court in case ***"State of Rajasthan v. Shere Ram @ Vishnu Dutta" (2012) 1 SCC 602*** has observed that there is a very thin but a fine distinction between an appeal against conviction on one hand and acquittal on the other. The preponderance of judicial opinion is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal, the Court keeps in view the position that presumption of innocence in favour of the culprit stands fortified by his acquittal and in case the view adopted by the lower court is a reasonable one and the conclusion arrived at by it had its grounds well set out on the materials on record, acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice where interference is imperative and ends of justice would require.

8. In case, "***Ghurey Lal vs. State of U.P." (2008) 10 SCC 450***, after having discussed the various decisions, the law on the subject culled out, was summarized as under:-

> "*1. The appellate court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.*
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> *2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.*
>
> *3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial court was wrong.*
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> *In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:*
>
> *1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.*

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

(i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

(v) The trial court's judgment was manifestly unjust and unreasonable;

vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.

vii) This list is intended to be illustrative, not exhaustive.

9. In the latest pronouncement captioned as "***S. Anil Kumar v. State of Karnatka (2013) 7 SCC 219*** while placing reliance upon ***"Rohtash v. State of Haryana" (2012) 6 SCC 589***, concluded that it is only in exceptional cases where there are compelling circumstances and where judgment in appeal is found to be perverse, the interference in the judgment/order of acquittal is required. The Hon'ble Apex Court made the following observations in ***Rohtash's*** case (supra):-

"*The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. (Vide State of Rajasthan v. Talevar MANU/SC/0705/2011 : (2011) 11 SCC 666 and*

Govindaraju v. State MANU/SC/0211/2012 : (2012) 4 SCC 722.)"

10. So, in view of the legal proposition referred to above, it can be safely concluded that interference of appellate court in appeal against acquittal or discharge should not be a matter of routine. However, where trial court commits jurisdictional error and further that judgment/order of acquittal is perverse or against the evidence or legal proposition, appellate court is competent to interfere, modify and reverse the judgment/order.

11. Adverting to the facts of the case in hand, both respondents were summoned to face trial under Sections 406 and 420 IPC read with Section 34 IPC vide order dated August 21, 2007 and subsequently, on the basis of pre-charge evidence, they were also charge sheeted for *prima facie* for the commission of aforesaid offences. From the evidence adduced by respondents before learned trial Court it stands proved that applicant/complainant-Suraj Bhan incurred a sum of ₹4,50,000/- for the purchase of tractor and payment of said amount was made to M/s Pall Motors and Tractors, Narwana, Jind through cheque.

12. It is also evident, as per record that tractor was delivered in the bank. It is also abundantly clear from the documents placed on record Ex.D1 to D4 that tractor in question was delivered to applicant/complainant. Ex.D1 is the photograph of complainant on tractor purchased by him whereas, Ex.D2 is the delivery challan. Similarly, Ex.D3 is the bill of tractor whereas, Ex.D4 is the customer satisfaction letter. It is also well settled proposition of law that to bring home the guilt of accused for the alleged commission of an offence

punishable under Section 420 IPC, it is obligatory upon the complainant to prove that accused fraudulently induced him to part with some valuable property. The offence under Section 420 IPC would be complete if it is established that there is a direct nexus between false representation as well as delivery of property or for doing of something by the person deceived. Dishonest intention is the main ingredient to constitute such an offence, which must proceed or accompany the act of dishonesty. But in the case in hand, there is nothing on record to suggest that there was any dishonest intention of respondent No.1-Ashwani Kumar, on the day the loan was advanced to complainant for the purchase of tractor. Rather it was the complainant who approached respondent No.1-Ashwani Kumar for the advancement of loan as he intended to purchase a tractor after obtaining loan from the bank.

13. In view of the plethora of documentary evidence, applicant/complainant is estopped from saying that he has not been delivered a tractor by respondents especially, in the circumstances that he has candidly admitted his signatures on all these documents i.e. Ex.D1 to D4.

14. Here it would also not out of place to mention that Dalbir Singh accompanying the petitioner is none-else but real cousin of complainant. He is not a layman, who is otherwise a graduate. The cross-examination of Dalbir Singh also fortifies the version of respondents that tractor was checked by complainant at the time of its delivery who appended his signatures on various documents in his presence.

15. This Court does not find any infirmity or illegality in the impugned order dated September 10, 2012. As an upshot of aforesaid discussions this Court is of the considered view that applicant/complainant has failed to prove that learned trial Court has committed any judicial error while acquitting respondents or that acquittal of respondents is either perverse or against evidence or legal proposition.

16. Accordingly, this Court does not find any merit in the instant application moved under Section 378 (4) Cr.P.C. seeking leave to appeal, as such the same is declined and CRM-A-806-MA of 2013 is dismissed.

(JASPAL SINGH)
JUDGE

April 27, 2015
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