

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRM-A-1138-MA-2014
Date of decision:16.7.2015**

Amanpreet Kaur

...Applicant

Versus

Jashanpreet Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.J.K.Singla, Advocate for the applicant.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant application under Section 378 (4) of the Code of Criminal Procedure ('Cr.P.C.' for short), seeking leave to appeal, is directed against the judgment of acquittal dated 3.5.2014 passed by the learned Sub Divisional Judicial Magistrate, Phul ('SDJM' for short), whereby complaint under Sections 447, 379, 506, 148, 149, 427 and 120-B of the Indian Penal Code ('IPC' for short), was dismissed, acquitting the respondents-accused of the charges framed against them.

Briefly put, facts of the case, as recorded by the learned trial Court in para 1 of its impugned judgment of acquittal, are that the complainant claimed to be permanent resident of Mehraj, Patti Kala. She further claimed to be owner of half share in the land measuring 31 kanals 14 marlas in which she had possession over Khasra No.171//17(8-0), 24(8-0). Accused No.1 Jashanpreet Kaur was owner of remaining half share along with her son Hasandeep Singh and Gursimrandeep Singh. The complainant filed civil suit No.211 dated 22.10.2007 titled as Amandeep Kaur Vs.

Jashanpreet Kaur, that is suit for permanent injunction in which Court passed order of status quo. The complainant was sowing crops on the area of her share. She had sown cotton crop which was ready and ripe. On 15.10.2009 complainant along with her son Jagdev Singh, brother Gurjant Singh went to her fields to take a round at 2.00 PM. She found that accused Jashanpreet Kaur, Mehar Singh, Charanjit Singh Charna, Sukhminder Kaur, Pammi Singh, Jaswiner Kaur and Balvir Kaur etc. were plucking the cotton from her fields forcibly. Previously the accused watered the crop of complainant. The accused put the plucked cotton in the bundles. The complainant stopped the accused from doing so and told that Court passed order of status quo. The accused remained adamant and kept plucking the cotton crop. The son of the complainant called Nirranjan Singh and Gurmail Singh Sarpanch. The accused were again told not to pluck the cotton. The order of the Court was shown to them. The accused took “gandasas” and “dangs” and started abusing the respectable of the village. Jashanpreet Kaur told that she had talked to Kulvir Singh Sarpanch that one Jeet Singh and nobody could harm to her. The matter was reported to the police but accused had link with ruling party and due to party fiction no action was taken and ultimately an application dated 19.10.2009 filed to SSP and DSP, even then no action was taken.

Pre-charge evidence was produced by the complainant-applicant. Having found a prima facie case, charges were framed against the accused-respondents for the offences under Sections 447, 379, 506, 148 and 120-B IPC.

After charge evidence was produced by the complainant-applicant, who produced as many as three witnesses, besides producing

other documentary evidence on record. On closing the evidence of the complainant, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating material brought on record was put to the accused. However, the accused denied the charges, alleged false implication and claimed complete innocence. In their defence, accused produced two witnesses, besides producing other documentary evidence.

After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the complainant-applicant failed to bring home the guilt. The evidence brought on record was not found sufficient for recording the conviction of the accused. Accordingly, the complaint was dismissed and the accused were acquitted of the charges framed against them, vide impugned judgment of acquittal dated 3.5.2014. Hence this application under Section 374 (4) Cr.P.C., seeking leave to appeal against the impugned judgment of acquittal.

Learned counsel for the complainant-applicant submits that the applicant-complainant has brought on record cogent evidence, which was sufficient to record conviction of the accused-respondents. Since the learned trial Court fell in serious error of law, while not appreciating the evidence available on record, in the correct perspective, the impugned judgment of acquittal has resulted in miscarriage of justice. He prays for allowing the instant application.

Having heard the learned counsel for the applicant at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in the given fact situation of the case, noticed

hereinabove, present one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its appellate jurisdiction, for the following more than one reasons.

A bare perusal of the impugned judgment of acquittal would show that the learned trial Court considered each and every aspect of the matter, before arriving at a judicious conclusion. In fact, there were very many serious discrepancies in the evidence led by the complainant-applicant. The learned trial Court rightly appreciated the evidence available on record. Since the evidence brought on record by the applicant was not sufficient to record conviction, the impugned judgment of acquittal has not been found to be suffering from any perversity or illegality and the same deserves to be upheld.

The learned trial Court has proceeded on factually correct and legally justified approach, while passing the impugned judgment. The applicant has miserably failed to prove her exclusive possession over the piece of land in question. She was only co-sharere in the land and in such a situation, every co-sharer would be deemed to be in possession on every portion of the un-partitioned land. On this issue, the view taken by taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in **Mohammad Baqar and others v. Naim-un-Nisa Bibi & others**, 1956 AIR (SC) 548, **P.Lakshmi Reddy v. L.Lakshmi Reddy**, 1957 AIR (SC) 314, **Shambhu Prasad Singh v. Most.Phool Kumari & others**, 1971 AIR (SC) 1337, **Kailash Rai v. Jai Jai Ram and others**, 1973 AIR (SC) 893, **Kaviraj Basudevanand v. Harihar Gir (Dead) & others**, 1974 AIR (SC) 1991 and **Jai Singh & others v. Gurmej Singh**, 2009(1) RCR (Civil) 874 and Division Bench judgment of this Court in **Bachan Singh v.**

Swaran Singh, 2003(3) RCR (Civil) 70.

It is the settled proposition of law that whenever two views are possible, the view which goes in favour of the acquittal is to be adopted by the courts, as held by the Hon'ble Supreme Court in **Arulvelu & anr. vs.State represented by the Public Prosecutor and anr. 2009(4) RCR (Crl.) 638**. The law laid down by the Hon'ble Supreme Court in the case of **Arulvelu** (supra), has been further reiterated by the Hon'ble Supreme Court in its numerous later judgments, including in the cases of **Rathinam @ Rahinan Vs. State of Tamil Nadu, 2011 (11) SCC 140, Sunil Kumar Sambhudayal Gupta and others Vs. State of Maharashtra, 2010 (13) SCC 657 and Upendra Pradhan Vs. State of Orissa (Criminal Appeal No. 2174 of 2009 decided on 28.4.2015)**.

The relevant observations made by the Hon'ble Supreme Court in para 10 and 11 of its judgment in **Upendra Pradhan's case** (supra), which can be gainfully followed in the present case, read as under:-

“Taking the First question for consideration, we are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognized as a human right by this Court. In Narendra Singh and Another v. State of M.P., (2004) 10 SCC 699, this Court has recognized presumption of innocence as a human right and has gone on to say that:

“30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally

well settled that there is a long distance between ‘may be’ and ‘must be’.

31. It is also well known that even in a case where a plea of alibi is raised, the burden of proof remains on the prosecution. Presumption of innocence is a human right. Such presumption gets stronger when a judgment of acquittal is passed. This Court in a number of decisions has set out the legal principle for reversing the judgment of acquittal by a Higher Court (see Dhanna v. State of M.P., Mahabir Singh v. State of Haryana and Shailendra Pratap v. State of U.P.) which had not been adhered to by the High Court.

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33. We, thus, having regard to the post-mortem report, are of the opinion that the cause of death of Bimla Bai although is shrouded in mystery but benefit thereof must go to the appellants as in the event of there being two possible views, the one supporting the accused should be upheld.” (Emphasis Supplied)

11. The decision taken by this Court in the aforementioned case, has been further reiterated in State of Rajasthan v. Raja Ram, (2003) 8 SCC 180, wherein this Court observed thus:

“Generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal.

The golden thread which runs through the web of

administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether any of the accused committed any offence or not. (see Bhagwan Singh v. State of M.P.) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.” (Emphasis Supplied)

Therefore, the argument of the learned counsel for the appellant that the High Court has erred in reversing the acquittal of accused appellant, stands good. The Additional Sessions Judge was right in granting him benefit of doubt. The

view which favours the accused/appellant has to be considered and we discard the opposite view which indicates his guilt. We are also of the view that the High Court should not have interfered with the decision taken by the Additional Session Judge, as the judgment passed was not manifestly illegal, perverse, and did not cause miscarriage of justice. On the scope of High Court's revisional jurisdiction, this Court has held in Bindeshwari Prasad Singh v. State of Bihar, (2002) 6 SCC 650, "that in absence of any manifest illegality, perversity and miscarriage of justice, High Court would not be justified interfering with the concurrent finding of acquittal of the accused merely because on re-appreciation of evidence it found the testimony of PWs to be reliable whereas the trial Court had taken an opposite view." This happens to be the situation in the matter before us and we are of the view that the High Court was wrong in interfering with the order of acquittal of Upendra Pradhan passed by the Additional Sessions Judge."

During the course of arguments, learned counsel for the applicant could not point out any jurisdictional error or patent illegality in the impugned judgment of acquittal passed by the learned trial court, so as to convince this Court to take a different view than the one taken by the learned court below. In such a situation, no interference is warranted at the hands of this Court and the impugned judgment deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present application is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference is made out.

Resultantly, with the above-said observation made, the present application stands dismissed, however, with no order as to costs.

16.7.2015
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(RAMESHWAR SINGH MALIK)
JUDGE