

In the High Court of Punjab and Haryana at Chandigarh

Crl. Misc. No. A-1212-MA of 2014 (O&M)
Date of Decision: 16.2.2015.

Ashok Sethi

.....Applicant

Versus

Ravi Raj Deora

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Ravish Bansal, Advocate
for the applicant.

SABINA, J.

Respondent had faced trial in a complaint filed by the complainant under Section 420 of the Indian Penal Code, 1860. Trial Court vide order dated 17.10.2012 ordered the acquittal of the respondent of the charge framed against him. Hence, the present application under Section 378(4) of the Code of Criminal Procedure, 1973 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 complainant, in brief, is that respondent agreed to sell the plot measuring 505 square yards in Aman Nagar, Kotakpura to the applicant and had received the entire sale consideration from the applicant vide agreement dated 26.1.2005, although, the sale deed was to be executed in the near future. However, later it transpired that respondent was not the owner of the plot in question.

Trial Court while ordering the acquittal of the respondent has held that applicant had failed to establish that respondent was not owner of the plot in question. Applicant has also not filed any suit for specific performance of agreement to sell in question. The reasons given by the Trial Court while ordering the acquittal of the respondent, are sound reasons. 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 16, 2015
Gurpreet