

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CRM-A No.1537-MA of 2014
Date of Decision : 15.7.2015

Manjeet Kaur Arora

.....Applicant-appellant

Vs.

Anil Jain

.....Respondent

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. J.S. Lalli, Advocate for the applicant-appellant.

...

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

RAMESHWAR SINGH MALIK, J

Applicant, by way of instant application under Section 378(4) of the Code of Criminal Procedure ('Cr.P.C.' for short) seeks leave to appeal against the impugned judgement of acquittal.

Brief facts of the case, as noticed by the learned trial court in para 1 of the impugned judgement are that the accused being well known to the complainant had approached her for friendly loan of Rs.2,50,000/-. The complainant had acceded to the request of the accused and advanced him a loan of Rs.2,50,000/- on dated 22.1.2013 after withdrawing from her bank and in order to discharge his legal liability accused issued a cheque bearing no.112431 dated 7.3.2013 for rs.2,50,000/- drawn on Bank of Baroda, Sunder Nagar, Ludhiana in favour of the complainant with the assurance that the said cheque

was issued at the time of presentation.

At the time of issuance of this cheque the accused assured the complainant that the cheque be encashed and accordingly firstly the complainant presented the cheque in her account with i.e. Kotak Mahindra Bank Ltd. Feroze Gandhi Market, Ludhiana but the said cheque was dishonored on dated 8.3.2013 with remarks "Funds Insufficient" thereafter the complainant got served a legal notice to the accused with registered AD/UPC on dated 23.3.2013 through his counsel, calling upon the accused to make the payment of the cheque amount. The accused has received the legal notice but neither the accused replied it nor made the payment of the cheque amount. Hence the present complaint.

After leading the preliminary evidence by the complainant-appellant, the learned trial court took the cognizance of the matter and issued the summoning order. Accused-respondent appeared. Having found a prima facie case, the learned trial court framed the charges against the accused. Accused pleaded not guilty and claimed trial.

With a view to prove its case, the complainant produced the documentary as well as oral evidence. On conclusion of the prosecution evidence, the learned trial court recorded the statement of the accused under Section 313 Cr.P.C. All the incriminating material brought on record was put to the accused. Accused alleged false implication and claimed complete innocence.

After hearing learned counsel for both the parties and going through the evidence brought on the record, the learned trial court came to the conclusion that the complainant has failed to bring home the guilt against the accused. Evidence produced was not found sufficient to record conviction. Accordingly, accused was acquitted of the charges framed against him, vide

impugned judgement of acquittal dated 4.8.2014. Hence, this application under Section 378 (4) Cr.P.C., at the hands of the complainant, seeking leave to appeal against the impugned judgement of acquittal.

Learned counsel for the applicant submits that the learned trial court has misdirected itself, while passing the impugned judgement of acquittal. He further submits that the complainant has produced cogent and well convincing evidence, which was sufficient to record the conviction of the accused-respondent. However, since the learned trial court miserably failed to appreciate the evidence brought on the record in the correct perspective, the impugned judgement has resulted in miscarriage of justice and the same is liable to be set aside. He prays for allowing the instant application.

Having heard 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 keeping in view the peculiar facts and circumstances of the present case, no interference is warranted at the hands of this court, for the following more than one reasons.

A bare perusal of the impugned judgement of acquittal would show that the learned trial court has examined, considered and appreciated all the relevant aspects of the matter, in the correct perspective, before recording its cogent findings in favour of accused. The documentary as well as oral evidence brought on record has been rightly appreciated. Relevant principles of law applicable to the peculiar fact situation of the case have been followed. Having said that, this court feels no hesitation to conclude that the view taken by the learned trial court cannot be said to be perverse in any manner and the impugned judgement deserves to be upheld.

It is the settled principle of law that wherever two views are possible, the view which goes in favour of acquittal is to be adopted by the courts. Once the view taken by the learned trial court, has been found, as a matter of fact, to be one of the possible views and the findings recorded have not been found to be perverse, hardly any scope is left for this court to interfere. In these circumstances, it can be safely concluded that the impugned judgement does not suffer from any illegality and the same deserves to be upheld, for this reason also.

The above said view taken by this court also finds support from the judgement of 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 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. Xxx xxx xxx xxx xxx

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 Page 15 15 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 Page 16 16 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."

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court in the cases referred to herein above, it is unhesitatingly held that since the impugned judgement has not been found to be suffering from any illegality, the same deserves to be upheld.

During the course of hearing, learned counsel for the applicant

failed to point out any jurisdictional error or patent illegality apparent on the record of the case, in the impugned judgement of acquittal, so as to convince this court to take a different view than the one taken by the learned trial court, therefore, no interference is warranted at the hands of this court. Thus, the impugned judgement 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, instant application stands dismissed, however, with no order as to costs.

15.7.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE