

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1852-MA-2015

Date of Decision: December 15,2015

State of Punjab

...Appellant.

Versus

Ashok Kumar S.E. and others

...Respondent

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS.JUSTICE RAJ RAHUL GARG**

1. *Whether Reporters of the 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?*

Present: Mrs. Manjari Nehru Kaul, Addl. AG, Punjab
for the appellant.

RAJ RAHUL GARG, J.

State of Punjab has filed the application for grant of leave to appeal against the judgment of acquittal dated 25.05.2015 rendered by the learned Additional Sessions Judge, Patiala.

Vide the aforesaid judgment, the learned trial Court acquitted respondents-accused Ashok Kumar son of Shri Ram Lal, Marginder Mohan Sayal son of Shri M.M. Sayal and Subhash Chander son of Shri Jagat Ram in FIR No. 59 dated 24.11.2009 under Sections 420, 467, 468, 471, 201, 199, 192, 200, 120-B IPC and Section 13(1) (d) read with Section 13(2) of Prevention of Corruption Act, Police Station Vigilance Bureau Patiala, registered against the respondents-accused.

Brief facts of the case are like this; that in May/June 2001 some air conditioners were got installed in the newly constructed building of Municipal Corporation, Patiala in pursuance of contract awarded to Amtrex Hitachi for Rs.58,83,000/-. On the basis of information that the officials of Municipal Corporation, Patiala have caused loss of huge amount to the government by committing fraud in the said transaction, the aforesaid FIR was registered. On investigation, the Vigilance Bureau, Patiala found that in the year 2001

Municipal Corporation, Patiala had a proposal for getting air cooling plant installed to cover area of 41000 sq. ft. and to get installed air conditioners in the area of 5000 sq ft. Tender in this regard was issued. However, respondent-Ashok Kumar the then Superintending Engineer had dropped the said proposal and prepared a note that air conditioning units should be got installed in the entire building and same should be purchased at the rates fixed by DGSD from Amtrex Hitachi. As per the rates approved by DGSD the rate of an air conditioner of 1.5 ton manufactured by Amtrex Hitachi was Rs. 23,590/- and thus the rate of one ton of air conditioner comes to Rs. 15,726/- and rate of 222 tons of air conditioner should have been Rs.34,91,172/-. However, the respondents got installed air conditioning unit of 222 tons from the said company @ Rs.26,500/- per ton and total Rs.58.83 lacs were spent on the project. Earlier against an estimate of Rs.49.50 lacs for installation of air conditioners in the 3 buildings of Municipal Corporation, Patiala, the respondent-M.M. Sayal, Executive Engineer had prepared another estimate of Rs.58.83 lacs and the same was approved by respondent-Ashok Kumar on 23.5.2001. The Municipal Corporation has also shown expenditure on the ducting/false ceiling/Gypsum board of Rs.13,92,450/-, Rs.9.31 lacs, Rs.1,90,000/- and Rs.2,71,450/-. Amtrex Hitachi had also charged Rs.21,22,107/- towards ducting charges. Therefore, Municipal Corporation, Patiala has shown expenditure on ducting twice. It was alleged that the respondents misappropriated the amount by showing exaggerated expenditure on the said items. It is also alleged that MM Syal and Subhash Chander-accused destroyed original file pertaining to installation of air conditioning units in Municipal Corporation, Patiala.

After completion of necessary investigation, challan was filed against respondents-accused.

On finding a prima-facie case the charge under Sections 467,468,471,120-B IPC and Section 13(1) Read with Section 13(2) of Prevention of Corruption Act was framed against the accused. However, the accused pleaded not guilty to the charge and claimed trial.

After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded wherein accused denied each prosecution allegation and pleaded that they are innocent and have been implicated falsely.

After hearing learned counsel for the parties and appraising the entire material coming on record, the learned trial court held that no excess amount has been paid to the company/supplier by the Municipal Corporation, Patiala and some payment is still to be made to the company/supplier. Therefore, it was held that it cannot be said that any over payment has been made to the company by the Municipal Corporation, Patiala. The learned trial Court finding that the prosecution has failed to establish that the accused have abused their official position by awarding contract to Amtrex Hitachi Appliance Ltd. or that the respondents-accused have received any illegal gratification from the Company, acquitted the respondents-accused of the charge framed against them.

The aforesaid judgment of acquittal dated 25.5.2015 has been assailed by the State of Punjab before this Court by seeking leave to appeal.

We have heard Smt. Manjari Nehru Kaul, Additional Advocate General, Punjab and also appraised the entire material on record.

This is an appeal against acquittal. Interference in an appeal against acquittal is called for only if the judgment under appeal is perverse or based on misreading of the evidence. Merely because the Appellate Court is inclined to take a different view, is no reason calling for interference.

Smt. Manjari Nehru Kaul, Additional Advocate General, Punjab argued that the respondents-accused have committed criminal breach of trust as they being officers of the Municipal Corporation, Patiala misappropriated the amount by showing exaggerated expenditure on the air conditioning units.

Learned Counsel for the appellant-State contended that the learned trial court has failed to appreciate the oral as well as documentary evidence available on the file. Accused incorrectly and fraudulently prepared the

estimates of costs of air conditioning units and ducting/false ceiling/Gypsum board thereby causing huge financial loss to the State exchequer. It was also contended by the learned Counsel for the State that the learned trial court has not taken into consideration the entire evidence in true perspective.

There is no fault in appraisal of oral as well as documentary evidence available on the file by the trial Court. If we take the evidence available on the file into consideration as it is, no criminal offence is said to be proved against the accused beyond reasonable doubt. In fact, the learned trial court has dealt with the matter in question minutely discussing each and every point minutely.

We find no illegality in the findings of the learned trial court when it says that no over payment has been made to Amtrex Hitachi rather remaining payment of the company is still to be made. Thus, when no bribe was taken by the respondents-accused, the offence under Section 13(1)(d) of the Prevention of Corruption Act, 1988 can not be said to be made out.

Under the above discussed circumstances, *mens rea* of the accused is not established on the file to cause loss to the State Exchequer. The findings recorded by the trial court that the prosecution has failed to prove that the respondents-accused have abused their official position by awarding contract to Amtrex Hitachi Appliance Ltd. or that they have received any illegal gratification for the same or any excess payment has been made to the said company, therefore, the findings recorded by the trial Court cannot be said to be perverse or in any way misreading of evidence warranting interference of this Court.

For the reasons recorded above, finding no merit in this appeal, leave to appeal sought for by the State is declined.

Dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

15.12.2015
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