IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM Nos. A-1828, 1830, 1831, 1833, 1842, 1844, 1873 to 1875, 1905-MA of 2014 and 70-MA of 2015

T.D.Gandhi, Income Tax Officer ...Petitioner

Versus

Sudesh Sharma ...Respondent

Date of Decision:**-9.2.2015**

CORAM: HON'BLE MR.JUSTICE MEHINDER SINGH SULLAR

Present:- Mr.Yogesh Putney, Advocate for the petitioner.

Mehinder Singh Sullar, J. (Oral)

As identical questions of law and facts are involved, therefore, I propose to dispose of the indicated petitions for leave to appeal, arising out of the similar impugned judgments of acquittal of the same date between the same parties, vide this common order to avoid the repetition. However, the conspectus of the facts, which needs a necessary mention for deciding the core controversy, involved in the present petitions, has been extracted from (1) **CRM No.A-1828-MA of 2014** titled as **"T.D.Gandhi Income Tax Officer Vs. Sudesh Sharma**" for ready reference in this context.

2. The epitome of the facts and evidence, unfolded during the course of trial, culminating in the commencement, relevant for disposal of the instant petitions for leave to appeal and emanating from the record, is that Sudesh Sharma, Advocate respondent-accused was practicing on income tax side. The main assessee Ashok Kumar Sharma, Railway contractor (for brevity "the main assessee") had engaged him for the purpose of submission of his income tax returns for the assessment year 1988-89, supplied him the requisite documents, including TDS certificates

in this regard. Consequently, the respondent had filled the income tax return on behalf of main assessee and claimed a refund of Rs.3497/- on the basis of TDS certificates purported to have been issued by the Senior Divisional Accounts Officer, Northern Railway, New Delhi. The complainant-Income Tax Officer (for short "ITO") claimed that in the wake of verification, the TDS certificates were found not to be genuine and the refund was wrongly claimed by the main assessee.

3. Leveling a variety of allegations and narrating the sequence of events in detail, in all, according to the complainant, the main assessee has wrongly claimed the refund of Rs.3497/- on the basis of wrong TDS certificates submitted in his income tax return, through respondent-accused Sudesh Kumar, Advocate. In the background of these allegations, the complainant ITO had instituted different complaints, not against the main assessee, but against Sudesh Sharma, Advocate in the manner described here-in-above. Similar complaints were also filed by complainant-ITO against the respondent-accused with respect to the different returns of relevant assessment years of main assessees, in other connected matters.

4. Having completed all the statutory formalities, ultimately, the respondent-accused was ordered to be summoned, by virtue of summoning order dated 29.3.1993 by the trial Court. Consequently, he was charge sheeted for commission of offences punishable u/ss 418, 465, 468 & 471 IPC. The contents of charge sheets were read over and explained to the respondent, to which, he pleaded not guilty and claimed trial. Thereafter, the case was slated for evidence of the complainant by the trial court.

5. Having closed the evidence of complainant, the statement of the respondent-accused was recorded as contemplated under Section 313

Cr.P.C. The entire incriminating evidence was put to enable him to explain any circumstances appearing on record against him. However, he had stoutly denied the evidence of complainant in its totality and pleaded false implication. He has also tendered into defence evidence copy of plaint (Ex.D1).

6. Sequelly, taking into consideration the totality of the peculiar facts & evidence on record, the respondent-accused was acquitted, by means of impugned judgments of acquittal dated 16.8.2014 by the trial Court.

7. Likewise, the complainant-ITO did not feel satisfied and preferred the instant petitions for leave to appeal against the impugned judgments of acquittal, invoking the provisions of section 378(4) Cr.PC. That is how I am seized of the matter.

8. After hearing the learned counsel for the petitioner, going through the record with his valuable help and after deep consideration over the entire matter, to my mind, there is no merit and the present petitions for leave to appeal deserve to be dismissed in this respect.

9. Ex facie the argument of learned counsel that since there was sufficient evidence on record, so, the trial Court has committed a legal mistake to acquit the respondent-accused, by way of impugned judgments of acquittal, sans merit.

10. At the very outset, it may be added here that the jurisdiction of appellate Court in case of acquittal was determined by the Hon'ble Apex Court in a celebrated judgment of Ghurey Lal v. State of U.P. **2008(10) SCC 450.** Having considered the scope of sections 378, 386 Cr.PC and a line of various judgments on the point, it was ruled as under (Para 75):-

> *"**75**. 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.*

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused."

11. Above being the legal position and evidence on record, now the short & significant question, though important, which invites an immediate attention of this Court and arises for determination in the instant petitions is, as to whether the trial Court has committed such jurisdictional error or patent illegality to acquit the respondent-accused and there are substantial and compelling reasons to set aside the impugned judgments of acquittal by this Court or not ?

12. Having regard to the contentions of learned counsel for petitioner, to me, the answer must obviously be in the negative, as the complainant-ITO has miserably failed in this relevant connection and the present petitions for leave to appeal deserve to be dismissed for the reasons mentioned here-in-below.

13. As indicated here-in-above, the bare perusal of the record would reveal that complainant-ITO claimed that the main assessee had submitted the income tax return for the assessment year 1988-89 claiming a refund of Rs.3497/- based on false TDS certificate through respondent-accused Sudesh Sharma, Advocate. The learned counsel for petitioner has miserably failed to point out that how and in what manner, the respondent can be held liable for preparing false documents, which were previously supplied to him by the main assessee. The mere fact that he had prepared the income tax return on behalf of assessee, ipso facto, is not a ground, muchless cogent, to hold respondent-accused guilty for the commission of pointed offences in the absence of main assessee, as contrary urged on behalf of petitioner.

14. Strange enough, the complainant ITO had not filed any complaint against the main assessee and only arrayed the respondent Advocate as an accused, who was stated to have submitted the income tax returns of relevant years on his behalf, for the reasons best known to him (ITO). That means, the respondent-accused had only submitted the income tax return along with all the indicated documents on behalf of main assessee. In other words, all the TDS certificates, which were purported to have been issued by the Northern Railway, were supplied by the main assessee to his Advocate. It was the main assessee, who had procured the documents from the concerned authorities and claimed the refund. Not only that, in case, the main assessee had claimed the refund on the basis of forged TDS certificates, then, the Income Tax Authorities were competent and well within their jurisdiction to reject his claim of refund and even to impose penalty under the relevant provisions of The Income Tax Act. Thereafter,

the aggrieved party had a right to file the statutory appeal in this relevant connection. Be that as it may, therefore, the respondent-accused, who was an Advocate, had just submitted the income tax return on behalf of main assessee, cannot possibly be and indeed could not legally be held liable for criminal prosecution for procuring the documents by main assessee in order to attract the penal provisions of offences in question, as contrary urged on behalf of complainant-ITO.

15. There is yet another aspect of the matter, which can be viewed entirely from a different angle. What cannot possibly be disputed here is that the complainant-ITO had earlier filed similar 45 complaints, in which, the respondent was acquitted, vide different judgments of acquittal by the trial Court. The petition for leave to appeal, bearing CRM No.A-959 MA of 2014 and 44 other connected petitions titled as "Income Tax Officer & Another V. Sudesh Sharma" were dismissed, by means of detailed judgment dated 10.11.2014. Meaning thereby, the controversy involved in the present petitions is squarely covered and decided by way of earlier judgment dated 10.11.2014 of this Court. Therefore, I see no reason to grant the leave to appeal against the impugned judgments of acquittal in these cases as well in the similar obtaining circumstances of these cases.

16. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the petitioner.

17. In the light of aforesaid reasons and thus seen from any angle, as there is no merit, therefore, the instant petitions for leave to appeal are hereby dismissed as such as well.

(Mehinder Singh Sullar)
Judge

9.2.2015
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