

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-A-1878-MA of 2014 (O&M)
Date of Decision: 02.07.2015**

Union Territory of Chandigarh

.....Applicant

Vs.

Kanwal Kishore Jerath and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Amarjit Singh Virk, Advocate
for the applicant.

1. Whether Reporters of 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?

RAMESHWAR SINGH MALIK J.

Feeling aggrieved against the impugned judgment of acquittal dated 27.3.2014 passed by the learned Special Judge, Chandigarh, whereby accused-respondents were acquitted of the charges framed against them, prosecuting agency-U.T. Chandigarh has approached this Court by way of instant application under Section 378 (4) of the Code of Criminal Procedure ('Cr.P.C.' for short), seeking leave to appeal against the impugned judgment.

Relevant facts, abstracted from para 2 to 4 of the impugned judgment, as recorded in detail by the learned trial court, are that on 20.11.1997 and 21.11.1997, the Income Tax Department

conducted raids on the premises of K.K.Jerath, Chief Engineer and certain other officials of Engineering Department, U.T., Chandigarh as well as the contractors and suppliers. During raids, huge recovery was effected from the house of Chief Engineer in the shape of cash, jewellery and documents, which were found to be disproportionate to the known assets. Later on, the Vigilance Cell of Chandigarh Administration received two photocopies of diaries from Income Tax authorities, which were recovered from the premises of Dinesh Sharma, Suresh Sharma, Sunil Kalia. From the perusal of these diaries, it was revealed that the said persons were acting as middlemen between K.K.Jerath and a number of firms borne on DGS& D rate contract for the supply of electrical and some Public Health goods. On the basis of these documents, inquiry was conducted by Vigilance Department, Chandigarh. On inquiry report dated 23.1.1998, legal opinion was obtained and on the basis of legal opinion, it was recommended for registration of FIR under Section 13 (1) (a) (b) (c) (d) & (2) of Prevention of Corruption Act ('PC Act' for short) read with Sections 406/409/420/read with Section 120-B of the Indian Penal Code ('IPC' for short) against the accused K.K.Jerath, Chief Engineer, middlemen Suresh Sharma, Dinesh Sharma and Sunil Kalia and others. The facts of inquiry report are as below:-

On 20.11.1997 and 21.11.1997, the Investigation Wing of Income Tax authorities conducted raids on the premises of K.K.Jerath, Chief Engineer and certain other officials of Engineering Department as well as the contractors and suppliers. On the basis of recovery of huge amount of cash, jewellery and documents pointing

to disproportionate assets beyond the known sources of income, Sh. K.K.Jerath was placed under suspension on 24.11.1997 by the Chandigarh Administration.

Now the Vigilance Cell of the Chandigarh Administration has received the photo copies of two diaries from the Income tax authorities, which were recovered from the premises of Sarvshri Dinesh/Suresh Sharma, who were learnt to be real brother and working jointly, and Sunil Kalia. From the perusal of these diaries, it was revealed that the said persons were acting as middlemen between K.K.Jerath and a number of firms borne on DGS& D rate contract for the supply of electrical and some Public Health goods

The diary recovered from the premises of Sharma was an extremely important document in which entries of kickbacks made to Shri K.K.Jerath and other officers/officials were made for the period of 8.9.1995 to 26.3.1997. This diary also contains a record of receipts and expenditures of Sharma during the period under reference and was actually a cash book. The receipts and expenditures both were of professional and personal and inter alia contain documentary evidence of heavy payments made to Sh. K.K.Jerath, his P.A., his Peon and other officials of the Engg. Department of various levels as commissioner. Entries of the said diary were very clear and straight forward and can be easily decoded. The entries contain a record of payments (illegal gratification) paid to Shri K.K. Jerath, his P.A., Shri Vashisht, his Peon and certain other officials of the Engineering Department on different dates for different supply orders during the period 8.9.1995 to 26.3.1997. The names of the firms on which

supply orders were placed, were also clearly indicated against each payment to Shri Jerath and others. The figures were not round figures thereby making it clear that commission paid was calculated as a certain percentage of the total value of the supply orders. These payments, in turn, were reflected as expenses in the column numbers of supply order expenses. The names of these officials appear repeatedly in the diary.

On the basis of abovesaid allegations, supplemented by further allegations, investigation was conducted, relevant documents of the case were taken into possession. Statements of witnesses were recorded under Section 161 Cr.P.C. Accordingly, after completion of investigation, challan against the accused-respondents was presented in the court for the offences punishable under Section 13 (1) (a) (b) (c) (d) and (2) of the PC Act read with Sections 406/409/420/120-B IPC. Copies of the challan alongwith documents were supplied to the accused, as required under the relevant provisions of law. Having found a prima facie case against the accused, learned trial court framed charges, vide order dated 5.4.2013. Accused-respondents pleaded not guilty to the charges framed and claimed trial.

In order to substantiate its case, prosecution examined as many as 54 prosecution witnesses, besides producing on record numerous documents in the form of Ex.P-1 to Ex.P-74. After closing of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating material brought on record was put to the accused. They denied the

allegations leveled against them and pleaded false implication claiming complete innocence. Accused opted to lead defence evidence. Three defence witnesses were produced, besides producing numerous documents.

After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that prosecution has failed to bring home guilt against the accused. Accordingly, accused were acquitted of the charges framed against them vide impugned judgment of acquittal dated 27.3.2014 passed by the Special Judge, Chandigarh. Hence this application by the complainant under Section 378 (4) Cr.P.C., seeking leave to appeal.

Learned counsel for the applicant vehemently contended that the prosecution has brought trustworthy and voluminous evidence on record, which was sufficient to record the conviction of the accused-respondents. However, since learned trial court misdirected itself, while passing the impugned judgment of acquittal, the same was not sustainable in law. He further submits that voluminous documentary as well as oral evidence brought on record was not properly appreciated by the learned Special Judge, because of which, a serious miscarriage of justice has taken place. He prays for allowing the present 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 arguments advanced, this Court is of the considered opinion that keeping in view the peculiar

facts and circumstances of the case, present one is not a fit case warranting interference at the hands of this Court. To say so, reasons are more than one, which are being recorded hereinafter.

A bare perusal of the impugned judgment would show that learned Special Judge, Chandigarh, has discussed, considered and appreciated each and every relevant aspect of the matter and that too, very meticulously. All the evidence, documentary as well as oral, brought on record has been considered in minute detail. On further scanning the testimony of prosecution witnesses, learned trial court in its analysis, found that prosecution has failed to bring home the guilt against the accused persons. The evidence brought on record was not found sufficient to record the conviction and the accused were acquitted of the charges framed against them. Having said that, this Court feels no hesitation to conclude that learned trial court committed no error of law, while passing the impugned judgment of acquittal and the same deserves to be upheld.

Before arriving at a judicious conclusion, learned trial court, in para 18 to 57 of its self contained judgment, recorded cogent and convincing findings. Relevant observations made by the learned trial court in para 23 to 25, 43 and 55, which deserve to be noticed, read as under:-

23. *“After evaluating the statement of approvers Jagdish Mitter (PW-2) and A.K.Sachdeva (PW-3), it is revealed that they have nowhere deposed that they have committed any crime and they have ever remained accomplice of the*

accused in commission of any crime. The testimonies of an approver is trustworthy provided that he fulfill three tests:

(1) That he was accomplice.

(2) Sufficient corroboration is available from other evidence.

(3) He is otherwise reliable witness.

24. In order to see the existence of the connection, there has to be some inculcation by the accomplice about his role in the commission of the offence. Unless there is some inculcation, the difference between an accomplice and eye witness gets blurred. The inculcation might be ever so slight but the accomplice cannot paint himself totally as a protestor, as a victim, as an innocent person and place the entire blame on the other co-accused persons for the commission of the crime. In case, he was to do so, then he removes himself from the category of an accomplice and places himself from the witness. Even a simple perusal of the testimony of the approver reveals that he does not inculcate himself in the commission of the offences because he categorically admitted during cross-examination that he has never seen any money transaction taking place inter-se any accused and he further stated that he has not committed any offence by

way of accepting any commission. It has also come in the evidence that on the noting file Ex.D-137 and Ex.D-138, it is not mentioned that there was any pressure from K.K.Jerath to inflate the demand. PW-3 A.K.Sachdeva admitted that K.K.Jerath then Chief Engineer himself recorded in noting Ex.D=195 that why such a large quantity of exhaust fans is being asked by Superintending Engineer Electrical. It has also come on the file that noting on the files was made by PW-3 A.K. Sachdeva and he identified his signatures on all the notings. PW-3 A.K. Sachdeva further stated that he has not made any complaint against K.K.Jerath or anyone else regarding entering into wrong activities like passing of amount to anyone. He had not made notes of any happening whatsoever it was during his posting under K.K.Jerath and he had made a statement under Section 166 of the Code of Criminal Procedure only from his memory. He further stated that he cannot tell as to which Sunil Kalia was agent.

25. *In their statements, both the approvers have nowhere stated about the mode of payment made by the middlemen, to whom, at what point of time and in whose presence. Not only this, they had specifically stated during their examination that they*

had not committed any crime involved in the present case. Such type of statement made by witnesses, who were accused in the present case and similarly in other cases, is quite astonishing. Moreover, the statement made by approvers not inculcating themselves in their testimony, rather exculpating themselves from the alleged crime and inculcating the others in their deposition during trial is not at all admissible in evidence.

43. *The prosecution is trying to make a castle on the sandy foundation by placing reliance on the entries of the diaries, by way of connecting with certain supply orders showing that the orders were placed by the private firms through the middlemen. The prosecution examined as many as 18 representatives of the firms, but they have been declared hostile and they did not say anything that at any relevant time any commission was paid by those firms to the agents in lieu of those supply orders. Rather, they categorically stated that they directly dealt with the DGS& D rate contract and after placing orders, the goods were inspected by the concerned officials and after inspection, material was used to be supplied to the DGS&D firm and they received the payment directly from the DGS&D and they never made any middlemen*

to get the supply orders. Those witnesses also refuted the allegations levelled by the prosecution against the accused persons. Moreover, they stated that they never visited the office of Engineering Department, Chandigarh. So, the stand of the prosecution that these diaries should be considered as books of account and its entries are relevant, is merely a figment of imagination.

55. Obviously, the conduct of the prosecution witnesses was not immune from censure. Approvers as well as representatives of the firms have not supported the prosecution version and they have been declared hostile and the version put forth by these witnesses is intrinsically inadequate and inherently improbable to bring home the allegations levelled in the charge. There is no ring of truth in the prosecution version. According to the testimonial appraisal of the rule, it would be quite unjustified to award the conviction on the basis of the testimonies of the hostile witnesses.”

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 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."

During the course of arguments, learned counsel for the

applicant could not point out any jurisdictional error or patent illegality in the impugned judgment passed by the learned trial court, so as to convince this Court to take a different view than the one taken by the learned trial court. 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, present application stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

02.07.2015
Ak Sharma