

CRM-A-1899-MA-2014

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1899-MA-2014
Date of decision: 03.08.2015

Sandeep Kumar

.... Applicant/Appellant(s)

Versus

Vimal Bansal

.... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 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: Mr. J.S.Brar, Advocate,
for the applicant.

PARAMJEET SINGH, J.

The instant application has been filed under Section 378(4) of the Code of Criminal Procedure (in short, 'Cr.P.C.') for grant of leave to appeal against the impugned judgment dated 30.09.2014 passed by the Chief Judicial Magistrate, Sri Muktsar Sahib whereby complaint filed by the applicant has been dismissed and the respondent has been acquitted of the notice of accusation served upon him.

Brief facts of the case are to the effect that applicant-complainant filed complaint with the averments that he was doing the business of kachha Aartia at New Grain Market, Sri Muktsar Sahib and

CRM-A-1899-MA-2014

was also running a shop of pesticides namely G.S.Agro Centre. He was the sole proprietor of the said firm. The account books of the firm were used to be maintained by his accountant Vijay Kumar and his father Satpal. Accused No.2 was partner of the firm Chanan Ram and Company, Sri Muktsar Sahib. On 01.04.1994, an amount of ₹1,66,360/- of the complainant firm was outstanding against the firm Chanan Ram and company. On 01.04.1996, an amount of ₹1,71,777/- was outstanding against the above said firm. On 23.07.1996, the above said firm took a loan of ₹93,650/- from the complainant-firm and on 20.11.1996, an amount of ₹2,60,427/- without including interest were to be taken by the complainant firm from the Chanan Ram and Company, Sri Muktsar Sahib. A civil suit for the recovery of the above said amount is pending against the above said firm from 17.08.1998. Accused No.1 is son of accused No.2 and also her attorney. Accused No.3 is friend of accused No.1. All the three accused entered into a conspriacy to save themselves from the liability of paying the loan amount in the decree to be passed against accused No.2 in the recovery suit and keeping in view that in the execution proceedings the shop No.165 situated at grain market, Sri Muktsar Sahib owned by accused No.2 would be auctioned, accused No.1 being attorney of accused No.2 fraudulently got that shop tansferred on 22.11.1996 in favour of accused No.3 and by falsely showing their residential address at Delhi got the sale deed registered at Delhi. Thereafter, mutation was also entered in the revenue record. With these averments, the complaint was filed.

CRM-A-1899-MA-2014

On the basis of preliminary evidence, the respondent-accused along with others was summoned under Sections 206/120-B/34 of the Indian Penal Code (in short, 'IPC').

In pre-charge evidence, the complainant examined himself as CW 1. Thereafter, notice of accusation was served upon respondent and Shakuntala Devi under Sections 206 and 120-B IPC, to which they pleaded 'not guilty' and claimed trial.

During the course of trial, accused-Shakuntala Devi expired and proceedings against her were abated.

Statement of respondent-accused under Section 313 Cr.P.C. was recorded wherein he pleaded complete innocence and false implication.

The trial Court, after appreciating the evidence, acquitted the respondent of the notice of accusation, served against him, vide impugned judgment dated 30.09.2014 Hence, this application for grant of leave to appeal.

I have heard learned counsel for the applicant and gone through the impugned judgment.

Learned counsel for the applicant vehemently contended that the judgment passed by the trial Court is not proper, legal and is erroneous. The trial Court has not considered the evidence of the witnesses. There is sufficient evidence on record to prove that the respondent alongwith others had committed the offences. The accused hatched a conspiracy and got the sale deed registered by submitting

CRM-A-1899-MA-2014

wrong and incorrect address of Delhi. No sale consideration was passed and it is only a sham transaction.

I have considered the contentions raised by learned counsel for the applicant.

The trial Court has acquitted the respondent on the ground that the complainant has to prove that a civil suit was pending before a court and not merely intended to be filed, for proving the offence under Section 206 IPC. The sale deed was executed by the respondent-accused, being attorney of accused No.2, in favour of accused No.3 on 22.11.1996 and civil suit for recovery was filed on 18.11.1997 i.e. after about one year of the execution of the sale deed. The trial Court has held that at the time of execution of sale deed dated 22.11.1996 by the respondent-accused being attorney of accused No.2, no civil suit was pending and therefore, the complainant was not able to prove the ingredients of Section 206 IPC.

It is a settled legal position that in appeal against acquittal, the appellate Court is not required to rewrite the judgment or to give fresh reasonings when the appellate Court is in agreement with the reasons assigned by the trial Court acquitting the accused. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial court while acquitting the respondent-accused and adopting the said reasons and for the reasons aforesaid, in my view, the impugned judgment is just, legal and proper and requires no interference by this Court at this stage. Hence, this appeal requires to be dismissed.

CRM-A-1899-MA-2014

Even the Hon'ble Supreme Court in the case of ***State of Goa v. Sanjay Thakran and another, (2007)3 SCC 75***, has reiterated the powers of the High Court in such cases. In para 16 of the said decision the Hon'ble Supreme Court has observed as under:

"16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to reappraise the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with."

Similar principle has been laid down by the Hon'ble Supreme Court in the cases of ***State of Uttar Pradesh v. Ram Veer Singh and others, 2007 AIR SCW 5553*** and in ***Girja Prasad (Dead) by LRs v. State of MP, 2007 AIR SCW 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

It is also a settled legal position that in appeal against acquittal, the appellate Court is not required to rewrite the judgment or to

CRM-A-1899-MA-2014

give fresh reasonings, when the reasons assigned by the Court below are found to be just and proper. Such principle has been laid down by the Hon'ble Supreme Court in the case of State of *Karnataka v. Hemareddy*, *AIR 1981 SC 1417* wherein, it is held as under:

"... This court has. observed in Girija Nandini Devi v. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

Thus, in case the appellate Court agrees with the reasons and opinion given by the trial Court, then the discussion of evidence is not necessary.

I have gone through the judgment passed by the trial Court. I have also perused the oral as well as documentary evidence led before the trial Court and also considered the submissions made by learned counsel for the applicant. The trial Court while considering the oral as well as documentary evidence has clearly observed that the complainant has failed to prove his case beyond reasonable doubt. Even before this Court, nothing has been produced or pointed out from the record of the case to rebut the conclusion of the trial Court. Thus, from the evidence itself it is established that the prosecution has not been able to prove its case beyond reasonable doubt.

CRM-A-1899-MA-2014

The Hon'ble Supreme Court in ***Muralidhar @ Gidda & Anr.***
vs. State of Karnataka 2014(2) RCR (Criminal) 507 has held as under:

“10. Lord Russell in Sheo Swarup vs. King Emperor [AIR 1934 Privy Council 227] highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said, “the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.” The opinion of the Lord Russell has been followed over the years.

11. As early as in 1952, this Court in Surajpal Singh v. State; [AIR 1952 SC 52], while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed, “the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”

*12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in **Tulsiram Kanu v. State; [AIR 1954 SC 1]**, **Madan Mohan Singh v. State of U.P.; [AIR 1954 SC 637]**, **Atley v. State of U.P.; [AIR 1955 SC 807]**, **Aher Raja Khima v. State of Saurashtra; [AIR 1956 SC 217]**, **Balbir Singh v. State of Punjab; [AIR 1957 SC***

CRM-A-1899-MA-2014

216], *M.G. Agarwal v. State of Maharashtra*; [AIR 1963 SC 200], *Noor Khan v. State of Rajasthan*; [AIR 1964 SC 286], *Khedu Mohton v. State of Bihar*; [(1970) 2 SCC 450], *Shivaji Sahabrao Bobade v. State of Maharashtra*; [(1973) 2 SCC 793], *Lekha Yadav v. State of Bihar*; [(1973) 2 SCC 424], *Khem Karan v. State of U.P.*; [(1974) 4 SCC 603], *Bishan Singh v. State of Punjab*; [(1974) 3 SCC 288], *Umedbhai Jadavbhai v. State of Gujarat*; [(1978) 1 SCC 228], *K. Gopal Reddy v. State of A.P.* ; [(1979) 1 SCC 355], *Tota Singh v. State of Punjab* [1987(2) R.C.R.(Criminal) 35: (1987) 2 SCC 529], *Ram Kumar v. State of Haryana*; [1994(3) R.C.R. (Criminal) 631 : 1995 Supp (1) SCC 248], *Madan Lal v. State of J&K*; [1997(4) R.C.R.(Criminal) 89: (1997) 7 SCC 677], *Sambasivan v. State of Kerala*; [1998(2) R.C.R. (Criminal) 693 : (1998) 5 SCC 412], *Bhagwan Singh v. State of M.P.*; [2002(2) R.C.R.(Criminal) 593 : (2002) 4 SCC 85], *Harijana Thirupala v. Public Prosecutor, High Court of A.P.*; [2002 (3) R.C.R.(Criminal) 861 : (2002) 6 SCC 470], *C. Antony v. K. G. Raghavan Nair*; [2002(4) R.C.R.(Criminal) 750 : (2003) 1 SCC 1], *State of Karnataka v. K. Gopalakrishna*; [2005(2) R.C.R.(Criminal) 20 : (2005) 9 SCC 291], *State of Goa v. Sanjay Thakran*; [2007(2) R.C.R. (Criminal) 458 : (2007) 3 SCC 755] and *Chandrappa v. State of Karnataka*; [2007(2) R.C.R.(Criminal) 92: 2007(1) Recent Apex Judgments (R.A.J.) 841: (2007) 4 SCC 415]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal

CRM-A-1899-MA-2014

against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.”

Learned counsel for the applicant has failed to show any error in law or on facts on the basis of which interference can be made by this Court in the judgment under challenge.

Dismissed.

03.08.2015
parveen kumar

(PARAMJEET SINGH)
JUDGE