

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-26-MA-2015
Date of decision: 17.07.2015

Krishan Kumar Nanda

... Applicant

Vs.

Raman Kumar

... Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Vikas Sagar, Advocate
for the applicant.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

Instant application under Section 378 (4) of the Code of Criminal Procedure ('Cr.P.C.' for short) is directed against the impugned judgment of acquittal dated 10.09.2014, passed by learned Judicial Magistrate 1st Class, Chandigarh, for seeking leave to file appeal.

Brief facts of the case, as recorded by learned trial Court in para 2 of the impugned judgment, are that the accused Raman Kumar was known to the applicant-complainant and he was in the dire need of money and for the purpose of financial help, he had approached the applicant for loan of Rs.45,000/-. This amount was required for the domestic purpose. It was on his request, complainant had agreed to pay him the said loan amount. It was stated that in discharge of his legal and financial liability, accused issued a

cheque bearing No.781589 dated 05.01.2012 which was drawn on Syndicate Bank, Branch Panchkula for the amount of Rs.45,000/- in his favour. The copy of cheque was Annexure C-1. It was stated that complainant when presented the said cheque before the Bank i.e. State Bank of Patiala, District Court, Sector 17, Chandigarh for encashment, the same was returned to him with the remarks "Account Dormant". The memo was attached as Annexure C-2. It was stated that after the receipt of information of the dishonouring of the cheque, a legal notice was issued to the complainant dated 31.01.2012 through registered post through his counsel. The copy of the legal notice and postal receipt were Annexures C-3 and C-4. The said legal notice was duly served upon the accused. It is alleged that despite the receipt of the notice, the accused failed to repay the amount which was to be paid to the complainant. It was stated that present complaint had been filed within statutory period and the accused is liable to be prosecuted as per the provisions of Section 138 of the Negotiable Instruments Act.

After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the complainant-applicant failed to bring home the guilt against the accused-respondent. Evidence led by the applicant was not found sufficient for recording the conviction of the accused. Accordingly, the complaint was dismissed and the respondent-accused was acquitted of the charges framed against him. Hence this application under Section 378 (4) Cr.P.C., seeking leave to file appeal against the impugned judgment of acquittal.

Learned counsel for the applicant submits that the learned trial

Court has proceeded on a misconceived approach, while passing the impugned judgment. He further submits that applicant brought on record cogent and convincing evidence, which was sufficient to record the conviction of the respondent-accused. However, since learned trial Court failed to appreciate the true facts of the case as well as the evidence on record, the impugned judgment has resulted in serious miscarriage of justice and the same deserves to be set aside. 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 contentions raised, this Court is of the considered opinion that in view of the peculiar fact situation of the present case, instant one has not been found to be a fit case warranting interference, at the hands of this Court, for the following more than one reasons.

A bare perusal of the impugned judgment of acquittal would show that the learned trial Court has considered each and every relevant aspect of the matter, before recording the cogent findings. The law laid down by the Hon'ble Supreme Court applicable on the issues involved in the present case, was rightly followed by the learned trial Court. Since the impugned judgment has not been found suffering from any patent illegality or perversity, the same deserves to be upheld.

During the course of arguments, learned counsel for the applicant failed to point out any patent illegality or jurisdictional error in the impugned judgment, so as to enable this Court to take a different view than the one taken by the learned trial Court. Further, it is the settled proposition of law that whenever two views are possible, the view which goes in favour of acquittal,

is to be followed by the courts. In this view of the matter, it is unhesitatingly held that the impugned judgment of acquittal is well justified on facts as well as in law and the same deserves to be upheld, for this reason as well.

The view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in the case of **Arulvelu & anr. vs. State represented by the Public Prosecutor and anr. 2009(4) RCR (Cr1.) 638**. The relevant observations made by the Hon'ble Supreme Court in para Nos.39, 40 and 41 in the case of Arulvelu (supra) read as under:

“In Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450, a two Judge Bench of this Court of which one of us (Bhandari, J.) was a member had an occasion to deal with most of the cases referred in this judgment. This Court provided guidelines for the Appellate Court in dealing with the cases in which the trial courts have acquitted the accused. The following principles emerge from the cases above:

- 1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.*
- 2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.*

3. *The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.*

4. *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.*

5. *If two reasonable or possible 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.*

40. *This Court in a recently delivered judgment State of Rajasthan v. Naresh @ Ram Naresh 2009 (11) SCALE 699 again examined judgments of this Court and laid down that "An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused. This Court has dealt with the scope of interference with an order of acquittal in a number of cases."*

41. *Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because the appellate*

court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law.”

The law laid down by the Hon'ble Supreme Court in Aruluvelu's case (supra) has also been followed by a Division Bench of this Court in the case of **State of Haryana v. Aman Kumar and another 2012 (3) RCR (Crl.) 330** and judgment dated 2.11.2012 passed by this Court in **CRM-A-284-MA-2011 (Baljeet Singh v. State of Punjab and others)**. Further, the view taken in Aruluvelu's case (supra) has been reiterated by the Hon'ble Supreme Court in many 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 paras 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 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."

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 the present application is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been

made out.

Resultantly, with the abovesaid observations made, the instant application stands dismissed, however, with no order as to costs.

17.07.2015
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE