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

CRM-A-618-MA of 2014

Date of decision: February 05, 2015

Babu Ram

.....Applicant

Versus

Lajja Ram and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Jarnail S. Saneta, Advocate
for the applicant.

SABINA, J

Respondents had faced trial in a compliant filed by the applicant under Sections 420, 406, 506/34 of Indian Penal Code, 1860 ('IPC' for short). Trial Court vide judgment dated 16.01.2014 ordered the acquittal of the respondents of the charges framed against them. Hence, the present application under Section 378(4) of Code of Criminal Procedure, 1973 for grant of leave to appeal.

I have heard learned counsel for the applicant and have gone through the record available on the file carefully.

Case of the complainant in brief was that he had given ₹1,20,000/- to the respondents on 10.02.2002 alongwith passport of Pawan Kumar on an assurance given by the accused that they would send his son-Pawan Kumar to Australia. Thereafter, complainant paid another sum of ₹1,80,000/- to the accused. However, Pawan Kumar was neither sent to Australia nor the amount in question was returned by the respondents to the complainant.

Trial Court while ordering the acquittal of the respondents, has held as under:-

“10. After having given a thoughtful consideration to the facts and circumstances of the present case, this Court is of the considered opinion that in the present case, the charge has been framed on 14.06.2013 against the accused persons under Sections 420, 406 and 506 read with Section 34 of IPC. Further, case of the complainant is that the accused persons in collusion with each other represented to the complainant that they will send his son to Australia for a sum of Rs.3,00,000/- and thereafter, the complainant handed over the passport and other documents alongwith Rs.1,20,000/- on 10.2.2002 and thereafter, on several dates, he also handed over remaining amount to the accused persons. Despite handing over the documents and money, the accused persons did not send the son of complainant to Australia. Now, from the perusal of contents of the compliant, it is clear that complainant specifically mentioned that on 10.2.2002, he handed over Rs.1,20,000/- alongwith passport and other documents to the accused in the presence of Rattan Lal. Further also, when complainant appeared into the witness box, he deposed the same thing that he handed over the passport and other documents to the accused persons. This stand of the complainant is totally contradictory to the deposition of his son, who, when appeared into the witness box as CW2, deposed in his cross examination that the passport was prepared by the accused Lajja Ram himself and in the month of February, 2002, he had handed over only the Ration Card and Mark-Sheet to the accused persons. Meaning thereby, they had not given the passport to the accused on 10.2.2002 and contents of the compliant in itself falsified the evidence of the complainant. Further, the most important aspect of the present case is that no original passport has been tendered by the complainant on case file till date and no plausible explanation has been given in this regard by the complainant. When the complainant himself failed to prove that he had not given

any passport in February, 2002, then how can he allege that there is any cheating on behalf of the accused persons. Further, all the transactions have been made before one Rattan Lal, however, Rattan Lal has not been examined in the present case, who was a best witness to prove the case of the complainant. Further, complainant has made his son a witness in the present case, after the death of said Rattan Lal and when he appeared into the witness box, he specifically mentioned in his examination in chief that he was present at the time of transactions between the complainant and the accused persons. This is totally contradictory stand taken by the complainant as there is no mentioning of presence of his son in the complaint or in the applications moved before SP and SHO Kurukshetra. Further, it is to the surprise of the court that when his son appeared in to the witness box, in this cross examination, he deposed that his father told him that he was present at the spot, when money was given to the accused Lajja Ram. He should have deposed that he was present at the spot. Meaning thereby, he did not remember that whether he was present at the spot or not. He is deposing that his father told him about his presence at the spot. He was not minor at that time that he could not remember his presence. It also creates doubt in the mind of the Court. Therefore, keeping in view the above discussion, the complainant has even failed to corroborate his own version as given in the compliant by way of leading some cogent and reliable evidence. Further, in view of the above discrepancies and lacuna in the case of the complainant, it can easily be said that the complainant has utterly failed to connect the accused persons with the alleged offence. It is well settled principle of criminal jurisprudence that the case of the prosecution should be proved beyond every shadow of reasonable doubt and the benefit of doubt, if any, must be extended to the accused. Therefore, while giving the benefit of doubt to the accused person facing trial in the instant case, the accused

persons are hereby acquitted of the charge framed against them. Their bail/surety bonds also stand discharged. Case property if any, be destroyed as per rules after expiry of period of appeal or revision. File be consigned to records after due compliance.”

The case of the complainant was that he had handed-over ₹1,20,000/- to the respondents on 10.02.2002 alongwith passport and other documents of his son. However, when the son of the complainant appeared in the witness-box, he deposed that he had only handed-over Ration Card and his Mark-Sheet to the respondents. Passport was prepared by the respondent No.1-Lajja Ram himself. In the facts and circumstances of the present case, the learned trial Court rightly came to the conclusion that the complainant had failed to establish that he had handed-over passport of his son to the respondents in February, 2002. A perusal of the Annexure A-2 (Exhibit C8) reveals that there was litigation between the complainant and the respondent No.1-Lajja Ram. Respondent No.1-Lajja Ram was tenant under the complainant. Petition filed by the complainant seeking ejectment of the tenant, was dismissed by the Rent Controller and in Appeal, the petition filed by the complainant was allowed by the Appellate Authority vide Annexure A-2. It is possible that due to strained relations between the parties, the compliant in question was filed against the respondents.

The reasons given by the trial Court while ordering the acquittal of the respondents of the charges framed against them, are sound reasons and call for no interference.

Their lordships of the Supreme Court in **Allarakhya K. Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748**, held that where, in a case, two views are possible, the one which favours

the accused, has to be adopted by the Court.

A Division Bench of this Court in **State of Punjab v. Hansa Singh, 2001 (1) RCR (Criminal) 775**, while dealing with an appeal against acquittal, has opined as under:

“We are of the opinion that the matter would have to be examined in the light of the observations of the Hon'ble Supreme Court in *Ashok Kumar v. State of Rajasthan*, 1991(1) SCC 166, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.”

To the same effect is the ratio of the judgments of the Supreme Court in **State of Goa v. Sanjay Thakran (2007) 3 SCC 755** and in **Chandrappa v. State of Karnataka, (2007) 4 SCC 415**.

Similarly, in **Mrinal Das & others v. The State of Tripura, 2011 (9) Supreme Court Cases 479**, the Supreme Court, after looking into various judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

“8) It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the

conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are “compelling and substantial reasons”, for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed”

Hence, no ground is made out to grant leave to file an appeal. Accordingly, this application is dismissed.

**(SABINA)
JUDGE**

February 05, 2015

m.singh