

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-743-MA-2015

Date of decision: 10.07.2015

Khushi Ram Yadav

... Applicant

Vs.

Rajinder Singh and ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. J.P. Sharma, 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.

Feeling aggrieved against the impugned judgment of acquittal dated 05.01.2015 passed by learned Judicial Magistrate 1st Class, Mahendergarh, whereby complaint under Section 217, 218, 379, 380, 403, 120-B of the Indian Penal Code ('IPC' for short) was dismissed, complainant has approached this Court by way of instant application under Section 378 (4) of the Code of Criminal Procedure ('Cr.P.C.' for short), for seeking leave to appeal against the impugned judgment of acquittal.

Brief facts of the case, as recorded by the learned trial Court in paras 2 to 4 of the impugned judgment, are that the complainant is resident of Village Marla Sarai. In FIR No.84 dated 22.03.2008 under Section 302/34 IPC, Police Station Kanina, complainant and his family members were detained in judicial custody. In absence of complainant vehicle bearing No.RJ

27G-2647 LPT-1612, which was driven by his brother Hawa Singh. Above mentioned vehicle was hired by Gairin Career and Contracts, Delhi Private Ltd., Gurgaon. Present accused persons committed a theft of above mentioned vehicle in absence of complainant. All documents of vehicle were also taken by the accused persons. Accused persons also demanded bribe from complainant for giving benefit to him under case registered against him under Section 302/34 IPC. Complainant refused to do so, therefore, accused persons had committed theft of complainant's vehicle. Accused persons had committed theft of vehicle after one month of detention of complainant in judicial custody. Therefore, they had committed offence under Section 217, 218, 379, 380, 403 IPC read with Section 120-B IPC. A notice dated 30.09.2008 was sent by complainant to accused persons. Hence, the present complaint.

In preliminary evidence, complainant had examined CW1 Raj Kumar, CW2 Hawa Singh, CW3 Bhupender and CW4 Khushi Ram complainant himself. Thereafter, the complainant had closed the preliminary evidence.

On finding a prima facie case against the above mentioned accused for the commission of offences punishable under Section 166/403/120-B IPC, accused No.1 to 4 were ordered to be summoned to face trial under Section 166/403/120-B IPC, vide order dated 10.06.2013.

Having found a prima facie case against the accused for the offences punishable under Sections 166/403 and 120-B IPC, the accused were charge-sheeted, to which they pleaded not guilty and claimed trial.

In order to substantiate his allegations levelled in the complaint,

the complainant examined himself as PW1 and reiterated the averments taken in the complaint. However, he did not produce any other witness in support of his case. Thereafter, statement of the accused under Section 313 Cr.P.C. was recorded. The accused denied all the incriminating circumstances appearing against them in the evidence led by the complainant and they pleaded their complete innocence. Accused produced as many as six witnesses in their defence evidence, besides producing numerous documents.

After hearing the learned counsel for both the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the complainant has failed to bring home the guilt against the accused. Accordingly, giving benefit of doubt to the accused, they were acquitted from the charges framed against them, vide impugned judgment of acquittal dated 05.01.2015. Hence this application under Section 378 (4) Cr.P.C., seeking leave to file appeal.

Learned counsel for the applicant submits that the applicant-complainant has duly proved his case. There was cogent evidence available on the record, which was sufficient to record conviction of the accused-respondents. However, since the learned trial Court misdirected itself while passing the impugned judgment of acquittal, same was sustainable in law. 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 the peculiar facts and circumstances of the case, noticed hereinabove, present application under Section 378 (4) is

misconceived and the same is liable to be dismissed, for the following more than reasons.

A bare perusal of the impugned judgment of acquittal would show that the learned trial Court proceeded on a factually correct and legally justified approach, while passing the impugned judgment. Each and every relevant aspect of the matter was discussed and appreciated in the correct perspective, before arriving at a judicious conclusion. In fact, present one was a case of no evidence. The complainant-applicant, except making his self-serving statement before the Court, did not examine any other witness in support of his case. Having said that, this Court feels no hesitation to conclude that the learned trial Court committed no error of law, while passing the impugned judgment of acquittal and the same deserves to be upheld.

Learned trial Court recorded its cogent findings which cannot be said to be either illegal or perverse, under any circumstances. In this regard, relevant observations made by the learned trial Court in paras 12 & 13 of its impugned judgment of acquittal, read as under: -

“After hearing learned counsels for both of the parties, it comes to the considered opinion of this Court that as prosecution/complainant counsel has failed to prove the guilt of the accused beyond reasonable doubt. Perusal of file shows that complainant has failed to prove on file record that accused persons did not perform their duty as per law. Moreover, complainant also failed to prove on file record that accused persons illegally took vehicle of complainant in their custody. Complainant while appearing in witness box stated that his

driver was driving his vehicle from Gurgaon. Further he stated that at time of releasing vehicle on superdari accused persons were not present there. Evidence adduced by defence counsel that on alleged day accused persons never went to Gurgaon. Except complainant, none appeared on behalf complainant in witness box. Neither complainant's brother nor his driver appeared before Court. Moreover, ingredients of Section 403 IPC is also not proved on file record. Ex.D2 shows that complainant has filed a suit for damages which is dismissed vide order dated 10.11.2014. So, the version of the complainant is not clear like crystal, then there is no other way except to give benefit of doubt to the accused.

In view of the above discussion, it is observed that the complainant has failed to prove his case beyond reasonable doubt against the accused. Hence, all the accused namely Rajender Singh, Inderaj Singh, Suresh Kumar and Hari Singh are hereby acquitted from charges levelled against them in this case by giving benefit of doubt.”

A bare reading of the above-said observations made by the learned trial Court would show that the applicant-complainant has miserably failed to prove his case. Under these circumstances, it can be safely concluded that the present application moved by the applicant is misconceived and the same is liable to be dismissed, for this reason also.

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 (Crl.) 638**. The relevant observations made by the Hon'ble Supreme Court in para Nos.39, 40 and 41 in the case of Arulvelu's case (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 Arulevlu'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)**.

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.

[RAMESHWAR SINGH MALIK]
JUDGE

10.07.2015
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