

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

**Crl. Misc. No. M-19316 of 2008 (O&M)
Date of Decision: 21.10.2015.**

Jarnail Singh

.....Petitioner

Vs.

Veer Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. A.S.Virk, Advocate
for the petitioner.

Mr. Ashit Malik, Advocate
for respondents No. 1 and 2.

Mr. H.S.Gill, Senior Advocate with
Mr. K.B.S.Mann, Advocate
for respondent No. 3.

Ms. Dimple Jain, AAG, Haryana.

.....

SABINA, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 challenging the order dated 10.5.2008 (Annexure P-1).

Prosecution story, in brief, is that Udham Singh-father of the complainant and his brothers were owners in possession of land measuring 720 kanals 12 marlas of land. The land had been partitioned by the father of the complainant and his brothers. In the year 1991, a dispute arose between the complainant and accused Gurdip Singh and Veer Singh qua cultivation of the land. The dispute was referred to the Arbitrators. The Arbitrators vide their award handed over the

possession of the land to all the seven brothers except *khasra* Nos. 763, 761 and 762 and the possession qua the said *khasra* numbers was handed over to the father of the complainant. Entry in the *khasra girdawri* was made qua the said *khasra* numbers in favour of Udham Singh, father of the complainant. Accused Veer Singh filed a civil suit for possession qua the *khasra* numbers in question and the said suit was dismissed by the Civil Court on 10.10.1994. Accused Balbir Singh was the Patwari of the village and he had fabricated a false entry in the *khasra girdawri* qua *khasra* No. 763 in favour of accused Gurdip Singh and his two minor children. In the year 1996, accused Ram Chander in connivance with the Patwari made wrong entries in the revenue record.

After completion of investigation and necessary formalities, challan was presented against respondents No. 1 to 3.

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

Learned Trial Court while ordering the acquittal of respondents No. 1 to 3 has held that the case of the complainant was that the matter had been referred to Arbitrators namely Sarabjinder Singh, Advocate and Santa Singh Bachgaon. The said Arbitrators had given their award and had handed over the possession of the land to all the seven brothers. However, the Arbitrators were not examined as witnesses by the prosecution to substantiate the plea of the complainant that qua the *khasra* numbers in question, possession had been handed over to the

father of the complainant. It has transpired during the course of arguments that the award passed by the Arbitrators was never made the Rule of Court.

It has been further noticed by the Trial Court that accused Veer Singh had filed civil suit for possession qua *khasra* No. 763 and the same was dismissed on 10.10.1994. Accused Veer Singh had placed reliance on the entries in the *khasra girdawri* for the year 1994-1995. However, the complaint was filed on 3.12.1997 and formal FIR was registered on 11.5.1998. Thus, the Trial Court rightly held that there was unexplained delay in lodging of the complaint/FIR.

It has further been noticed by the Trial Court that in the years 1994 and 1996, accused Balbir Singh was posted as Patwari but there was no material on record that he had changed the entries in the *khasra girdawri* and *jamabandi* in favour of Gurdip Singh and his two minor children. Balbir Singh, Patwari had retired from service on 31.10.1996 but no complaint had ever been filed against him qua change of entries in the revenue record. Further, there was no opinion of the expert qua comparison of the hand writing and signatures on the forged *khasra girdawri* and *jamabandi* entries with the specimen hand writing of accused Balbir Singh, Patwari. No effort was made by the prosecution to seek specimen hand writing/signatures of accused Balbir Singh for comparison with the disputed entries in the revenue record. It has also been observed by the Trial Court that prosecution had, although, levelled allegations against the accused that they had forged the revenue record, but had failed to establish the same by leading any evidence. It has further

been noticed by the Trial Court that as per DW-1 Shyam Lal, Sadar Kanungo, the entries in the jamabandi was incorporated by Ram Chander, Kanungo. Hence, the learned Trial Court rightly came to the conclusion that the prosecution had failed to prove its case.

Their lordships of the Supreme Court in **Allarakha 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”

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

October 21, 2015
Gurpreet