

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

**CRM-M-1790 of 2015 (O&M)
Date of Decision: 6.8.2015**

Dev Karan

.....Petitioner

Vs.

Subhash and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. J.P.Sharma, Advocate
for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J.

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks quashing of the order dated 14.8.2014 (Annexure P-2) passed by the learned Sessions Judge, Narnaul, whereby criminal revision filed by the petitioner was dismissed and the order dated 13.6.2013 (Annexure P-1) passed by the learned Chief Judicial Magistrate, Narnaul, discharging the accused-respondents, in the complaint filed by the petitioner, was upheld.

Briefly put, facts of the case, as noticed by the learned Sessions Judge, in para 2 of the impugned order, are that Bansi Lal and Surajbhan, both sons of Mamraj, alongwith Jainarain son of Kanhiya Lal and Manohar Lal son of Har Sahai were recorded to be

owners of land bearing khewat No. 198, khatuni No. 272, khasra No. 558 total measuring 2 bigha 3 biswa situated within the revenue estate of Narnaul, while the complainant was recorded to be in possession of said land as gair marusi tenant, as per jamabandi for the year 1989-90. It was pleaded that the accused met the complainant and represented that abovesaid Bansi Lal, Surajbhan, Jainarain and Manohar Lal had died and they, alongwith Smt. Maya Devi widow and grand children of Jainarain namely Ramesh, Govind and Vikas and daughters Mithlesh and Uma, were owners of the aforementioned land competent to sell the same. Accordingly, accused No.1, with dishonest intention to cheat the complainant, entered into an agreement to sell of the abovesaid land in favour of the complainant on behalf of all the legal heirs of Jarinarain, referred to hereinabove, for a sale consideration of ₹8,25,000/- and received an amount of ₹4 lacs as earnest money on 18.2.2006. It was further alleged that accused had promised to execute the sale deed after sanctioning of mutation of inheritance in their favour and accused No.2-Dinesh had agreed to the terms of agreement, but subsequently, the accused did not execute the sale deed despite repeated request of the complainant. Thus, the complainant became suspicious and inspected the revenue record and came to know that the accused and other legal heirs of Jainaran were owners of the above noted land only to the extent of 1/3 share and remaining 2/3 share was owned by Mrs. Mishri Devi and Krishna Gopal, who were legal heirs of one Nand Lal son of Radhey Shyam son of Bhanwar Lal. It was alleged that the complainant came to know about the said

facts from mutation Nos.

13427/13429/13430/13431/13432/13433/13518/13519 and 13520 which were sanctioned on 18.2.2006 and thus, accused represented themselves to be absolute owners of the aforesaid land alongwith other legal heirs of Jainarain despite having knowledge that they had only 1/3 share in that property and grabbed an amount of ₹4 lacs from the complainant. It was further alleged that despite entering into agreement to sell dated 18.2.2006, accused alongwith other legal heirs of Jainarain sold their share in favour of one Suresh and Rajesh vide registered sale deed bearing vasika No. 326 dated 2.5.2007 and registered sale deed bearing vasika No. 512 dated 15.5.2007. It was further alleged that the accused also got the share of remaining owners of the suit property sold vide registered sale deed No. 37 dated 4.4.2007 and registered sale deed bearing vasika No. 77 dated 9.4.2007 and when the complainant came to know about the said facts, he met the accused at Jaipur and at that time, the accused threatened to kill the complainant. The complainant reported the matter to the police, but the police did not take any action against the accused and the petitioner-complainant filed a complaint.

Complainant-petitioner led his preliminary evidence and thereafter, accused-resondents were summoned to face the trial for the commission of offence punishable under Section 420 read with Section 34 of the Indian Penal Code ('IPC' for short). Complainant produced his pre-charge evidence. He produced as many as 7 PWs, besides bringing on record relevant documenatry evidence.

After hearing learned counsel for both the parties and

going through the evidence brought on record, learned trial court came to the conclusion that complainant-petitioner failed to make out a prima facie case, so as to frame charge against the accused. Accordingly, accused-respondents were discharged by the learned trial court, vide its impugned order dated 13.6.2013 (Annexure P-1). Dissatisfied, petitioner filed his criminal revision petition before the learned Sessions Judge, Narnaul, which came to be dismissed vide impugned judgment dated 14.8.2014 (Annexure P-2). Hence this petition.

Learned counsel for the petitioner submits that learned courts have misdirected themselves, while passing their respective impugned orders of discharge, as well as the impugned judgment, dismissing the revision of the petitioner. He further submits that petitioner has brought on record cogent and convincing evidence, which was sufficient to frame charge and also for recording conviction of the accused-respondents. However, since both the learned courts have miserably failed to appreciate the true factual as well as legal aspect of the matter, the impugned judgments have resulted in serious miscarriage of justice and the same are liable to be set aside. He prays for setting aside the impugned judgments, by allowing the present petition.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the arguments advanced, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, present one is not a fit case

warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. To say so, reasons are more than one, which are being recorded hereinafter.

A bare combined reading of both the impugned judgments would show that both the learned courts proceeded on a factually correct and legally justified approach, while passing their respective impugned judgments. Each and every relevant aspect of the matter, including the documentary as well as oral evidence, has been discussed, considered and appreciated in the correct perspective, by both the learned courts, before arriving at their respective judicious conclusions. Having said that, this Court feels no hesitation to conclude that none of the impugned judgments has been found suffering from any patent illegality or error of law and the same deserve to be upheld.

It is the settled proposition of law that whenever two views are possible, the view which goes in favour of the acquittal is to be adopted by the courts, as held by the Hon'ble Supreme Court in ***Arulvelu & anr. vs.State represented by the Public Prosecutor and anr. 2009(4) RCR (Crl.) 638.*** The law laid down by the Hon'ble Supreme Court in the case of Arulvelu (supra), has been further reiterated by the Hon'ble Supreme Court in its numerous 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 para 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."

During the course of arguments, learned counsel for the petitioner could not point out any jurisdictional error or patent illegality either in the order passed by the learned trial court or in the judgment passed by the learned Sessions Judge, so as to convince this Court to take a different view than the one taken by both the learned courts. In such a situation, no interference is warranted at the hands of this

Court and the impugned judgments deserve to be upheld, for this reason as well.

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 present petition 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, present petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

6.8.2015
Ak Sharma