

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Revision No.953 of 2005
Date of Decision: 16.09.2015

Smt.Preeto

....Petitioner

Versus

State of Haryana and another

....Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN.

Present: Mr.Sourabh Bajaj, Advocate,
for the revision-petitioner.

Mr.Bipan Ghai, Senior Advocate, with
Mr.Paras Talwar and Mr.Mandeep Kaushik, Advocates
for respondent No.2.

Mr.Arun Luthra, AAG Haryana.

JITENDRA CHAUHAN, J.

This revision is directed against the judgment of acquittal dated 21.02.2005 in Criminal Appeal No.28 of 2004 "Ved Parkash Vs. State of Haryana", passed by the Additional Sessions Judge (Ad hoc), Fast Track Court, Kurukshetra. The respondent-an advocate was convicted by the Judicial Magistrate Ist Class, Kurukshetra on 08.03.1999 under Sections 419, 466, 468, 471 read with Section 120-B of the Indian Penal Code and sentenced to undergo RI for two years under Section 419 IPC and RI for three years and a fine of Rs.500/- each under Sections 466, 468, 471 IPC with default clause.

Smt.Preeto filed Criminal Revision No.953 of 2005 against the acquittal of Sh.Ved Parkash, Advocate.

It is worthwhile to mention here that co-accused Kanshi

Ram and Krishan were also convicted along with Ved Parkash-

respondent vide the same judgment by the JMIC, Kurukshetra. Both of them filed a joint Criminal Appeal No.29 of 2004, which was dismissed on 21.02.2005 by the Additional Sessions Judge (Ad hoc), Fast Track Court, Kurukshetra. Both the convicted accused filed Criminal Revision No.456 of 2005 in this Court.

Criminal Revision No.953 of 2005 filed by Smt.Preeto against the acquittal of Sh.Ved Parkash and Criminal Revision No.456 of 2005 filed by co-accused Kanshi Ram and Krishan were heard and disposed of together by this Court on 11.03.2010. This Court allowed Criminal Revision No.953 of 2005, set aside the acquittal of Sh.Ved Parkash-respondent No.2, and restored the judgment of conviction and sentence passed by the Judicial Magistrate Ist Class, Kurukshetra. However, the Criminal Revision No.456 of 2005 filed by Sh.Kanshi Ram and Sh.Krishan was dismissed, by the same judgment. Krishan and Kanshi Ram co-accused filed Criminal Appeal No.279 of 2011 in the Hon'ble Supreme Court. The Hon'ble Supreme Court vide judgment dated 31.01.2011 was pleased to maintain the conviction of both the co-accused, but, the sentences were reduced to the period already undergone by them.

On coming to know about the setting aside of acquittal in Criminal Revision No.953 of 2005, Sh.Ved Parkash-respondent filed Criminal Miscellaneous No.18999 of 2010 in Criminal Revision No.953 of 2005, filed an application under Section 482 of the Code of Criminal Procedure for recalling of order dated 11.03.2010 on the ground that this Court never issued any notice to him, nor the appeal was admitted and, thus, prays that he may be heard on merits. On 09.04.2010 this Court

stayed the implementation of judgment dated 11.03.2010 of this Court passed in Criminal Revision No.953 of 2005. Later on, on 28.01.2013, the order/judgment dated 11.03.2010 was ordered to be recalled. This Criminal Revision No.953 of 2005 was admitted on 04.12.2014.

This revision came up for final hearing before this Court which is being heard on merits. Now this Court will advert to the facts of the case. Brief facts are taken from judgment of this Court in Criminal Revision No.456 of 2005 which are as under:

“Pirthi Singh had 25 acres of land at Villages Darra Khurd and Doda Kheri, one tractor, one car and one residential house. About one and a half years prior to the registration of the instant case against the accused, the officials of Electricity Board had come to cut eucalyptus trees from the land of Pirthi Singh situated in village Darra Khurd. Pirthi Singh engaged Ved Parkash Saini (respondent No.2 in Criminal Revision No.953 of 2005), who is a Practicing Advocate at Kurukshetra, as his counsel and called him (Ved Parkash Saini) at his (Pirthi Singh's) tube-well at Village Darra Khurd. At that time petitioners Kanshi Ram and Krishan, who are relatives of Pirthi Singh, were also present there along with others. Ved Parkash Saini, Advocate, got the thumb impressions of Pirthi Singh on two power of attorneys and on some blank papers and told him that he would file a suit regarding eucalyptus trees.

Later on, Pirthi Singh came to know that Kanshi Ram, Krishan, Ved Parkash Saini along with others, in conspiracy with each other, had used the above-mentioned papers in order to secure a decree in favour of Ran Singh son of petitioner Kanshi Ram regarding his property, tractor, car, residential house and the money

deposited in the Bank by illegally mentioning the said Ran Singh as his (Pirthi Singh's) son and also got entered a mutation fraudulently in favour of Ran Singh. Ran Singh had never been adopted as son by Pirthi Singh (deceased).

During investigation, the accused were arrested."

After completion of investigation a charge under Section 419, 466, 468, 471 read with Section 120-B of the Indian Penal Code was framed against all the accused to which they pleaded not guilty and claimed trial.

Prosecution in order to prove its case has examined Munshi Ram Gulati as PW-1, Jai Singh as PW-2, Dharam Pal as PW-3, U.B. Khanduja as PW-4, Smt.Prito as PW-5, Bishan Singh as PW-6, Dasrath Singh as PW-7, Amlok Ram as PW-8, Surjan Singh as PW-9, Gurdev Singh as PW-10, Kuldip Singh as PW-11. Daryab Singh as PW-11 whereas PWs Sohan Lal, Jai Narain were given being unnecessary and PW Tara Chand was given up being won over by the accused and certain documents were placed on file. Thereafter, prosecution failed to lead its entire evidence despite availing number of opportunities including the last opportunity and its evidence was closed by Court order.

Statements of the accused under Section 313 Cr.P.C. were recorded in which they pleaded false implication and opted to lead defence evidence and produced certain documents in their defence.

After hearing the learned Public Prosecutor for the State and also learned counsel for defence and going through the material on the file, the learned Judicial Magistrate Ist Class passed the impugned

judgment of conviction and order of sentence, as mentioned above.

The appellant-Ved Parkash preferred Criminal Appeal No.28 of 2004 titled as "Ved Parkash Vs. State of Haryana" which was allowed on 21.02.2005 and the present respondent-Ved Parkash, Advocate was acquitted of the charge. The Criminal Revision No.953 of 2005 in hand has been preferred by Smt.Preeto against the acquittal of respondent-Ved Parkash.

As referred to above, the present appeal was admitted on 04.12.2014 which came up for hearing before this Court. Learned counsel for the revision petitioner-complainant contended that it is proved that Ved Parkash Saini-respondent being an Advocate obtained thumb impressions on two power of attorneys of the complainant and on some blank papers on the pretext of filing a civil suit and thereafter, he, with the conspiracy of co-accused, misused the paper in a court of law. It is further contended that there is observation in the Civil Court judgment that respondent No.2 actually got the thumb impressions of Pirthi on blank power of attorneys and paper which were misused for obtaining a false decree in favour of other co-accused. The counsel contended that the judgment of the Civil Court is binding on a Criminal Court, therefore, the present respondent cannot escape from the criminal liability. Lastly it is contended that the judgment of acquittal of Ved Parkash is against the law.

On the other hand the learned Senior Counsel contended that once a finding of acquittal has been recorded by a competent Court of law, this Court on a private complaint will not convert the acquittal into conviction. The learned Senior Counsel further contended that

there is no error in the judgment and he has been rightly acquitted.

This Court has heard the learned counsel for the revision petitioner, the learned Senior Counsel for Ved Parkash-respondent, the learned State Counsel and carefully gone through the record with their able assistance.

Section 401 of the Code of Criminal Procedure defines the powers of the High Court in revision filed by a private party. Section 401(3) of the Code reads as under:

“Nothing in this Section shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.”

In Hydrus Vs. State of Kerala – 2004(13) SCC 374 the Hon'ble Supreme Court has held as under:-

“From a bare perusal of the impugned order, it would appear that the High Court upon reappraisal came to a conclusion different from the one recorded by the appellate court. It is well settled that in revision against acquittal by a private party, the powers of the Revisional Court are very limited. It can interfere only if there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate court. If upon reappraisal of evidence, two views are possible, it is not permissible even for the appellate court in appeal against acquittal to interfere with the same, much less in revision where the powers are much narrower. No procedural irregularity has been found by the High Court in the order of the Sessions Court whereby the appellant was acquitted. Therefore, we are of the view that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional powers, as such the same is liable to be interfered with by this Court.”

In Shingara Singh Vs. State of Haryana - 2004(2) R.C.R.

(Criminal) 940 it has been held as under:-

“It is well settled that in an appeal against acquittal the High Court is entitled to re-appreciate the entire evidence on record but having done so if it finds that the view taken by the trial Court is a possible reasonable view of the evidence on record, it will not substitute its opinion for that of the trial Court. Only in cases where the High Court finds that the findings recorded by the trial Court are unreasonable or perverse or that the court has committed a serious error of law, or where the trial Court had recorded its findings in ignorance of relevant material on record or by taking into consideration evidence which is not admissible, the High Court may be justified in reversing the order of acquittal. We do not find this case to be one where the High Court was justified in reversing the findings recorded by the trial Court. At best, it may be contended that the view taken by the High Court is also a reasonable view of the evidence on record. However, we cannot say that the view taken by the trial Court was not another reasonable view of the evidence on record. It is well settled that where two views are reasonably possible on the basis of the evidence on record, the one that favours the accused must be accepted. In any event in a case of acquittal if the view of the trial Court is a possible reasonable view of the evidence on record, interference by the High Court may not be justified.”

In Murugesan Vs. State through Inspector of Police 2013(1)

R.C.R.(Criminal) 791(SC), it has been held that *“If two reasonable conclusions are possible on the basis of the evidence on record, the appellate*

court should not disturb the finding of acquittal recorded by the trial Court."

In this case the best available witness is PW-9 Surjan Singh, a Clerk of Sh.Ved Parkash Saini-respondent. This witness has stated that he worked with Mr.Ved Parkash Saini, Advocate as Clerk from 1979 to 1985. This witness has filled the power of attorneys. He has not named Ved Parkash on whose directions he filled the forms. Rather the documents proved by the prosecution on the file show that the suit titled as "Ram Singh Vs. Pirthi Singh" was filed by PW-1 Sh.M.R. Gulati, Advocate on behalf of Ram Singh and Sh.R.K. Aggarwal, Advocate appeared on behalf of defendant-Pirthi. The present respondent neither appeared for the plaintiff nor for the defendant in the litigation in question. Sh.Ved Parkash Saini-respondent explains that the power of attorneys on which he got thumb impressions Ex.D-14 and Ex.D-15 were actually used by him in other cases. The prosecution has miserably failed to prove that the power of attorneys allegedly used in obtaining fraudulent decree were filled at the instance of the present respondent. The respondent cannot be convicted on surmises and conjectures. The complainant has only suspicion that Ved Parkash has misused the power of attorneys. From the entire evidence on record this Court could not find any role of the present respondent. In the Civil Suit Sh.M.R. Gulati, Advocate appeared for the plaintiff whereas Sh.R.K. Aggarwal, Advocate appeared for Pirthi (sometimes worded as Prithi). For the sake of repetition it is mentioned that no direct role has come where the respondent acted against the interest of the present revision petitioner in fraudulent decree case. PW-10 Gurdev Singh and PW-11 Kuldeep Singh have stated that Pirthi Singh intended to file a civil suit. PW-10

Gurdev Singh further stated that an advocate came at the spot and got his signatures but he did not recognise the present respondent who obtained the signatures. In this way the presence of Ved Parkash-respondent at the venue of obtaining the signatures or thumb impressions of Pirthi Singh on blank papers or on power of attorneys is not proved. The learned Appellate Court has rightly held that the prosecution has failed to prove the case against Ved Parkash Saini-respondent beyond any reasonable doubt. There is no illegality, perversity or miscarriage of justice. The view taken by the First Appellate Court in acquitting Ved Parkash-respondent is correct view and no other view is possible. The judgment of acquittal dated 21.02.2015 passed in Criminal Appeal No.28 of 2004 titled as "Ved Parkash Vs. State of Haryana" is hereby affirmed. The present Revision No.953 of 2005 is dismissed without any merit.

16.09.2015

ashok/S.K.

(JITENDRA CHAUHAN)
JUDGE