

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 2718 of 2008 (O&M)
Date of decision: 02.9.2015

Tayab Hussain

.....Petitioner

Versus

Manjit Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. R.K.Agnihotri, Advocate
for the petitioner.

Mr. Ashit Malik, Advocate
for respondent No. 1.

Ms. Gaganpreet Kaur, AAG, Haryana.

SABINA, J.

Respondent No. 1 had faced trial under Section 7 and 13(i)(d) of Prevention of Corruption Act, 1988 in FIR No. 12 dated 9.9.2006, registered at Police Station State Vigilance Bureau, Panchkula. Trial Court vide order dated 3.10.2008 ordered the acquittal of respondent No. 1. Hence, the present petition by the complainant-petitioner.

Learned counsel for the petitioner has submitted that prosecution had been successful in proving its case. Respondent No. 1 was caught red handed while accepting bribe.

Learned counsel for respondent No. 1, on the other hand, has opposed the petition and has submitted that respondent

No. 1 had been falsely involved in this case. In fact, on X-ray examination of the son of the petitioner, it was found that he had not suffered any fracture. Petitioner wanted respondent No. 1 to give a false report qua X-ray examination stating that his (petitioner) son had suffered a fracture. Petitioner had faced criminal proceedings in many cases.

Prosecution story, in brief, is that petitioner had met respondent No. 1 for X-ray examination of his son Intzar Hussain as he had received injuries in a fight. Respondent No. 1 told the petitioner to collect the report after one hour. When the petitioner met respondent No. 1 after one hour, he was told that as per the X-ray examination, his son had not suffered any fracture. However, respondent No. 1 demanded ₹ 20,000/- for giving a report that the son of the petitioner had suffered a fracture. The deal was settled at ₹ 10,000/- on 7.9.2006. On 9.9.2006, petitioner approached the Vigilance Department. On the basis of the statement of the petitioner, a raid was organized by PW-13 Karta Ram. The tainted currency notes were handed over by the petitioner to respondent No. 1 and he (respondent No. 1) kept the same in an almirah. The currency notes were recovered from the said almirah during raid. When the hands of respondent No. 1 were washed in a solution of sodium carbonate, the colour of the solution turned pink.

After completion of investigation and necessary formalities, challan was presented against respondent No. 1.

In order to prove its case, prosecution examined 15 witnesses.

Respondent No. 1 when examined under Section 313 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short), prayed as

under:-

“I have been falsely implicated and the witnesses have not spoken the truth. My track record in service is flawless and I am serving in Civil Hospital, Yamuna Nagar since 1982. Some how Tayab Hussain was under the misconception that he had been convicted in some criminal cases on account of X-rays of the injured in those cases having been conducted by me and reports prepared about fractures falsely by me. However, in those cases the X-rays were conducted by me in my capacity as radiographer as per direction of the medical officer concerned but the reports were not prepared by me nor that is my job. The reports were prepared by the medical officer concerned. Due to the said misconception Tayab Hussain nurtured a grudge against me and involved me falsely in this case.”

In the facts and circumstances of the present case, although, the complainant-petitioner and the other witnesses had supported the prosecution case but from the cross-examination of the petitioner it is evident that the possibility that respondent No. 1 might have been falsely involved in this case, cannot be ruled out.

Relevant cross-examination of the petitioner reads as under:-

“It is correct that FIR No. 208 dated 8.11.96 u/s 323, 324 and 325 read with Section 34 IPC was registered against me and my family members on the complaint of Satnam Kaur. It is also correct that said Satnam Kaur was radiologically examined by the accused in the present

case and report of fracture in nasal bone was given by Dr. Prem Chand. Volunteered-that it was a false case. It is correct that I alongwith my family members were convicted in the said case. Volunteered-that the appeal against that order is pending. It is also correct that FIR No. 248 dated 17.12.93 u/s 323, 325, 148 and 149 was registered against me and my family members. Volunteered-that the said F.I.R. was cancelled by the police and proceedings u/s 182 IPC were registered against the complainant. It is correct that a protest petition No. 723 was filed by the complainant and in that petition I alongwith my family members was convicted by the trial court but in appeal we were released on probation by the Sessions Judge, Yamuna Nagar. It is also correct that we preferred an appeal against the order of probation in the Hon'ble High Court and that appeal was dismissed. I do not know that in that case also X-ray was conducted by the present accused or not. It is correct that another complaint u/s 452, 323, 506, 148, 149 IPC was filed by Satnam Kaur against us. However, in that complaint charges u/s 148, 323 read with Section 149 IPC were framed against us, which is pending for final verdict. It is correct that an FIR No. 271 dt. 8.9.2007 u/s 323, 506 IPC was registered against my son Intzar in Police Station Farakpur on the complaint of Arjun Kumar s/o Som Parkash which is pending in the court. It is also correct that another FIR dated 23.11.2007 under the Excise Act was registered against me by the police of

police station Farakpur which is also pending. Except the above mentioned cases, no other case is pending against me. It is correct that I used to hear that in Civil Hospital, false reports of fracture are prepared and some such false reports were also prepared against me and on the basis of those false reports, I was convicted. So I wanted to see as to how these false reports are procured from the Civil Hospital, Yamuna Nagar. I had paid the money to the accused on demand as there was fracture on the person of my son. No other doctor gave the report of fracture of my son after the arrest of the accused. My son had received an injury on the arm but it was not fractured and money was demanded from me to show that a fracture was there.”

A perusal of the cross-examination of the petitioner rather shows that his son had, in fact, not suffered a fracture and he wanted a report from respondent No. 1 to the effect that his son had suffered a fracture. Petitioner has stated in his cross-examination that there was no report by any other doctor that his son had in fact suffered a fracture. In view of the cross-examination of the petitioner, the plea taken by respondent No. 1 when examined under Section 313 Cr.P.C. appears to be probable.

Hence, in the facts and circumstances of the present case, the learned Trial Court rightly ordered the acquittal of respondent No. 1.

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**

September 02, 2015

Gurpreet