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

**CRR No.1557 of 2012 (O&M)
Date of decision: October 01, 2015**

Buta Singh

.....Petitioner

Versus

Atma Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. P.S. Dhaliwal, Advocate
for the petitioner.

SABINA, J

Respondent had faced trial in a complaint No.6 dated 19.01.2005 filed by the petitioner under Sections 406, 420 of the Indian Penal Code, 1860 ('IPC' for short).

Trial Court vide judgment/order dated 07.11.2011 ordered the conviction and sentence of the respondent under Sections 406, 420 IPC. Appellate Court vide order dated 05.03.2012 ordered the acquittal of the respondent. Hence, the present petition by the complainant-petitioner.

Prosecution story, in brief, was that respondent had allured the petitioner to pay a sum of ₹20,000/- to get him appointed as peon. However, petitioner was neither provided the job nor the amount in question was returned to him.

Appellate Court while ordering the acquittal of the respondent has held as under:-

“19. In complaint filed by the

complainant/respondent it has been pleaded by him that amount of Rs.20,000/- was paid by him in May 2004 in the presence of Nihal Singh and Buta Singh son of Bachan Singh. Ex.C2 is the complaint moved by Buta Singh complainant/respondent to SSP Police District Barnala before filing of the present complaint for taking action against the accused/appellant in which he has specifically stated that about One year back accused approached him at his residence and an amount of Rs.20,000/- was paid by him in the presence of Buta Singh witness and his wife Gurmail Kaur. He has nowhere stated that amount was paid in the presence of Nihal Singh as pleaded by him in his complaint whereas in the complaint he has not given the name of his wife being also present there. Moreover this complaint shows that it was filed on 03.09.2004 and in it he has stated that amount was paid about one year back i.e. in September, 2003 whereas in the complaint he has alleged that amount was paid in May 2004.

20. *Ex. D2 is the statement of Nihal Singh which was recorded by Inquiry Officer, EO Wing, Barnala on the basis of complaint moved by complainant/respondent and in this statement Nihal Singh has specifically stated that no amount*

was paid by the complainant/respondent of Rs.20,000/- in his presence to the accused/appellant for procuring a job of peon and he (complainant) is telling a lie that this amount was given to procure a job but this amount was given regarding some election. This witness when appeared as CW3 he was confronted with this statement got recorded by him before the Enquiry Officer, EO Wing Barnala wherein he has admitted that Buta Singh has moved a complaint against Atma Singh to SSP which was entrusted to EO Wing for enquiry where he recorded his statement and he admitted his statement Ex.D2 as correct. He has also admitted in his cross examination that this amount was not given by complainant/respondent to procure a job of peon but in connection with some election. He has also admitted his signatures on the said copy of statement Ex.D2. Therefore, due to contradictory evidence given by Nihal Singh no reliance can be placed on his statement.

21. Ex.D3 is the statement of Buta Singh complainant/respondent recorded by Enquiry Officer, EO Wing and in his statement he has stated that accused/appellant came at village Burj Fatehgarh where he and he himself i.e. both

complainant and accused consumed liquor and thereafter he asked his wife to bring the amount of Rs.20,000/- which was given by him to Atma Singh. Again complainant/respondent has reiterated that this amount was give by him in the presence of his wife but he has not examined his wife to corroborate his version and he has not given the name of Nihal Singh in the said statement also. Complainant/respondent when appeared as CW1 he in his cross examination has admitted that he had not made enquiry whether posts of peon have been advertised or not. Again in the cross examination he has admitted that this amount was paid by him in village Burj Fatehgarh in the presence of Buta Singh son of Gurbux Singh. He was confronted with his complaint Ex.C2 wherein he has admitted that he had mentioned that amount was paid in the presence of Nihal Singh. He was confronted regarding presence/non presence of his wife at the time of giving amount. He has also admitted his statement copy of which has been placed on the record Ex.D3 by the Enquiry Officer. Due to contradictory evidence brought on the file complainant/respondent has failed to prove that he had paid any amount of Rs.20,000/- to

accused/appellant to procure a job of peon for him. Alleged copy of compromise Ex.C1 in the gram panchayat has no bearing effect on the merits of the present case because that compromise was between accused/appellant and one Gurtez Singh who has also allegedly paid an amount of Rs.20,000/- to the accused/appellant to procure a job but said Gurtez Singh has also not been examined by the complainant/respondent."

The reasons given by the Appellate Court while ordering the acquittal of the petitioner are sound reasons. So far as CW2 Nihal Singh is concerned, his statement was rightly discarded by the Appellate Court as the said witness had made a different version before the Enquiry Officer, EO Wing, Barnala. So far as the complainant is concerned, he had stated that he had paid ₹20,000/- to the respondent in the presence of his wife. However, wife of the complainant-petitioner had not been examined during trial in this regard. Complainant had placed reliance on compromise Exhibit C1. However, the said compromise did not relate to the complainant-petitioner.

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"

Hence, no ground for interference by this Court, is made out.

Dismissed.

(SABINA)
JUDGE

October 01, 2015
mahavir