

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CRR No.2383 of 2013
Date of Decision : 5.10.2015

Bhagwan DassPetitioner

Vs.

State of Haryana and othersRespondents

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CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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Present : Mr. Sat Narain Yadav, Advocate for the petitioner.
Mr. Manish Bansal, DAG, Haryana.
Mr. Shiv Kumar Goyal, Advocate for the respondents no.2 to 5.

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

RAMESHWAR SINGH MALIK, J

Feeling aggrieved against the impugned judgement dated 10.4.2013 passed by the learned Additional Sessions Judge, Narnaul, whereby appeal of the respondents-convicts against the judgement of conviction dated 1.12.2006, passed by the learned Judicial Magistrate Ist Class, Mohindergarh, was allowed, complainant has approached this court by way of instant criminal revision petition.

Brief facts of the case, as noticed by the learned Additional Sessions Judge in para 2 of the impugned judgement, are that on 27.4.1993 a complaint was presented in the court of the then Sub Divisional Judicial Magistrate, Mohindergarh which was later on forwarded to the SHO Police Station,

Mohindergarh under Section 156(3) Cr.P.C. for registration of a case and for investigation. The complaint was filed by Shri Bhagwan Dass against all the accused for committing forgery, cheating and dishonestly using documents which was said to be forged document. After receiving this complaint in the police station, SHO Police Station Mohindergarh registered this present case against the accused vide FIR No.123 dated 27.4.1993 under Sections 420,466,467,406,474,120-B IPC.

Complainant Bhagwan Singh was a resident of village Gudda. At the time of filing of this present complaint he was residing in Azaad Nagar, Delhi. He was the attorney of Umrao adopted son of Phool Chand, resident of Shalimar Baag, New Delhi. The owners of this land falling in Khewat No.72 executed attorney in favour of the complainant for sale of their land. The accused after hatching a conspiracy got executed a fabricated and forged agreement to sell in favour of Ram Singh son of Jai Lal. In the agreement they have mentioned the total sale consideration as Rs.30,000/- and in the agreement they had mentioned that attorney holder i.e. the complainant had received a sum of Rs.20,000/- as an earnest money. The accused after hatching a criminal conspiracy filed a civil suit on the basis of forged agreement whereas the complainant had never executed such agreement in favour of the accused Ran Singh. It is further stated that he had never visited in Mohindergarh to execute this agreement on the alleged given date. Hence, this present complaint was lodged against all the accused who had drafted this agreement in order to commit fraud and cheated the complainant. The FIR was got registered. Investigation was conducted. Relevant documents were recovered during the investigation and later on the accused were arrested in this case by the police. After completion of all the formalities of the investigation, final report under Section 173 Cr.P.C. was produced in the court by

the SHO Police Station, Mohindergarh for trial.

With a view to substantiate its allegations, prosecution examined as many as 15 PWs, besides producing on record the relevant documentary evidence. On closure of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating material brought on record was put to the accused. They denied the allegations, alleged false implication and pleaded complete innocence.

After hearing learned counsel for the parties and going through the evidence brought on the record, the learned trial court came to the conclusion that the prosecution has brought home the guilt against the accused, by proving its case beyond reasonable shadow of doubt. Accordingly, conviction of the accused-respondents was recorded, vide judgement of conviction and order of sentence dated 1.12.2006. Thereafter, vide order of sentence dated 1.12.2006, the accused-respondents were sentenced as under :-

“ Convicts are sentenced to undergo rigorous imprisonment for two years each and to pay a fine of Rs.500/- each under Section 420 IPC read with Section 120-B IPC. In default of payment of fine, the convicts will also undergo rigorous imprisonment for a period of three months each.

The convicts are also sentenced to undergo rigorous imprisonment for three years each and to pay a fine of Rs.600/- each under Section 467 IPC read with Section 120-B IPC. In default of payment of fine each convict shall further undergo rigorous imprisonment for a period of four months each.

The convicts are also sentenced to undergo rigorous imprisonment for two years each and to pay a fine of Rs.500/- each under Section 468 IPC read with Section 120-B IPC. In default of payment of fine each convict shall further undergo rigorous imprisonment for a period of three months each.

The convicts are also sentenced to undergo rigorous imprisonment for a period of one year each and to pay a fine of Rs.200/- each under Section 471 IPC read with Section 120-B IPC. In default of payment of fine each convict shall further undergo rigorous imprisonment for a period of two months each.”

However, the sentences were ordered to run concurrently. Amount of fine was deposited.

The convicts-respondents filed their appeal against the above said judgement of conviction and order of sentence. After hearing learned counsel for the parties, learned Additional Sessions Judge allowed the appeal, vide impugned judgment dated 10.4.2013. Hence, this revision petition, at the instance of the complainant.

Notice of motion was issued.

Learned counsel for the petitioner submits that the respondents-convicts were not liable to be acquitted. He further submits that since the learned Additional Sessions Judge has failed to appreciate the true fact situation leading to offences committed by the respondents-convicts, the impugned judgement is liable to be set aside. He prays for setting aside the impugned judgement, by allowing the present petition.

On the other hand, learned counsel for the accused-respondents

submits that impugned judgement is a just one and deserves to be upheld. He prays for dismissal of this petition.

Having heard learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this court is of the considered opinion that in the given fact situation of the present case, noticed herein above, instant one has not been found to be a fit case, warranting interference at the hands of this court, while exercising its revisional jurisdiction. To say so, reasons are more than, which are being recorded hereinafter.

A bare perusal of the impugned judgement passed by the learned Additional Sessions Judge, Narnaul, would show that each and every relevant aspect of the matter has been considered and appreciated in the correct perspective, before arriving at a judicious conclusion. The cogent reasons given by the learned Additional Sessions Judge, allowing the appeal of the accused-respondents have not been found to be suffering from any patent illegality. Having said that, this court feels no hesitation to conclude that the learned first appellate court committed no error of law, while passing the impugned judgement and the same deserves to be upheld.

Before arriving at a judicious conclusion, learned Additional Sessions Judge recorded well convincing and cogent findings, taking into consideration all the relevant factors, for the purpose of allowing the appeal of the accused-respondents. In this regard, the observations made by the learned Additional Sessions Judge in paras 14 and 15 of the impugned judgement, which deserves to be noticed here, read as under :-

“ Complainant Bhagwan Singh was a resident of village Gudda. At the time of filing of this present complaint he was

residing in Azaad Nagar, Delhi. He was the attorney of Umrao adopted son of Phool Chand, resident of Shalimar Baag, New Delhi. The owners of this land falling in Khewat No.72 executed attorney in favour of the complainant for sale of their land. The accused after hatching a conspiracy got executed a fabricated and forged agreement to sell in favour of Ram Singh son of Jai Lal. In the agreement they have mentioned the total sale consideration as Rs.30,000/- and in the agreement they had mentioned that attorney holder i.e. the complainant had received a sum of Rs.20,000/- as an earnest money. The accused after hatching a criminal conspiracy filed a civil suit on the basis of forged agreement whereas the complainant had never executed such agreement in favour of the accused Ran Singh. It is further stated that he had never visited in Mohindergarh to execute this agreement on the alleged given date. Hence, this present complaint was lodged against all the accused who had drafted this agreement in order to commit fraud and cheated the complainant. The FIR was got registered. Investigation was conducted. Relevant documents were recovered during the investigation and later on the accused were arrested in this case by the police. After completion of all the formalities of the investigation, final report under Section 173 Cr.P.C. was produced in the court by the SHO Police Station, Mohindergarh for trial.”

It is the settled principle of law that whenever two views are possible, the view which goes in favour of acquittal is to be adopted by the court.

It is not even argued case on behalf of the petitioner that the above said view taken by the learned Additional Sessions Judge was not one of the two possible views. Thus, the impugned judgement deserves to be upheld, for this reason as well.

The above said view taken by this court also finds support from the judgement of the Hon'ble Supreme Court Court in **Arulvelu & anr. vs. State represented by the Public Prosecutor and anr.** 2009(4) RCR (Cr1.) 638.

The law laid down by the Hon'ble Supreme Court in the case of Arulvelu (supra), has been 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 Page 15 15 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 reappraise 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 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."

A bare glance on the above said findings recorded by the learned Additional Sessions Judge would leave no room for doubt that the learned Additional Sessions Judge proceeded on a factually correct and legally justified approach, while allowing the appeal of the accused-respondents.

Further, during the course of arguments, learned counsel for the petitioner could not point out any factual error, patent illegality or jurisdictional error in the impugned judgement passed by the learned Additional Sessions Judge, so as to enable this court to take a different view, than the one taken by the learned court below. In this view of the matter, it can be safely concluded that the learned Additional Sessions Judge has not exceeded his jurisdiction, while passing the impugned judgement and the same deserves to be upheld, for

this reason also.

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 the present criminal revision petition has been found to be misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above said observations made, instant criminal revision petition stands dismissed, however, with no order as to costs.

5.10.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE