

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3444-2013

Date of decision: 17.08.2015

Manohar Singh Sachdev

... Petitioner

Vs.

Navjit Singh and ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Gurcharan Dass, Advocate
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

Instant criminal revision petition, at the hands of the complainant, is directed against the impugned judgment dated 23.07.2013 passed by learned Additional Sessions Judge, Ludhiana, whereby appeals filed by the State as well as by the complainant-petitioner against the impugned judgment of acquittal dated 15.09.2010 passed by learned Judicial Magistrate 1st Class, Ludhiana, were dismissed, upholding the acquittal of the accused-respondents.

Brief facts of the case, as recorded by the learned Additional Sessions Judge in para 3 of his impugned judgment, are that Manohar Singh son of Hazoor Singh moved an application before Deputy Superintendent of Police, City, Ludhiana, Charanjit Singh on dated 04.08.1997 to the effect that Hazoor Singh, father of the complainant was doing the business as a proprietor since

independence in the name and style of Khalsa Bartan Store. He had later on employed Amarjit Singh, father of the accused as Salesman. Amarjit Singh was a clean and devoted worker. By way of his hard work, he earned special place in the heart of Hazoor Singh, who induced him as a partner on 01.04.1967 to the extent of 30% share in the business without investing a single penny. The ownership and tenancy of shop was to remain of Hazoor Singh and no value was put with regard to goodwill. As per the special clause of partnership, the tenancy rights and goodwill was specifically retained by Hazoor Singh i.e. in the event of dissolution. On 12.05.1972 Hazoor Singh took Surinder Kaur his daughter-in-law as his partner in his 70% share. On the death of Hazoor Singh and Surinder Kaur having retired, the complainant being the only legal heir took over the share of Hazoor Singh and Surinder Kaur. New partnership deed was constituted with Amarjit Singh, in which Amarjit Singh had 30% share, whereas the complainant was holding 70% share. The partnership deed was executed on 08.11.1988. It was mentioned in the partnership deed that in the event of dissolution, the goodwill and tenancy rights would remain exclusively with Manohar Singh. Amarjit Singh had died on 30.06.1991. After his death, the complainant continued the business as a proprietor. Even during the life time of Amarjit Singh, Navjeet Singh was employed as a Salesman and was working as such and had been drawing his salary. After the death of Amarjit Singh, accused Navjit Singh and Inderjit Singh started claiming an amount of Rs.28626.34 paise being the outstanding amount against the name of Amarjit Singh, on account of partnership deed. The complainant had asked them to seek succession certificate, as Amarjit Singh had other legal heirs. The complainant had been doing the business as proprietor ever since the death of Amarjit Singh

and he had been filing the income tax and sales tax returns to the knowledge of Navjit Singh and Inderjit Singh. Navjit Singh and Inderjit Singh became dishonest and with an intention to misappropriate the property and to commit criminal breach of trespass devised a strategy and filed a suit for injunction and rendition of account on 09.04.1996, alleging as to there being partners of 30%. On the basis of ad-interim injunction, they ousted the complainant from his shop and openly started misappropriating the goods belonging to the complainant lying in the shop. They controverted the sale proceeds to their own use. On the application of the complainant, Sh. Ashok Mittal, Advocate was appointed as Local Commissioner. He visited the spot and prepared the inventory and found that no accounts were being maintained. The accused had also tampered with the documents and destroyed the valuable account books. Account books pertaining to the year 1995-96 were found at the spot, which were signed by the Local Commissioner. As per the account books, Navjit Singh was shown as an employee drawing salary of Rs.400/- per month and the complainant was shown as proprietor. Application filed for appointment of receiver was declined by the learned lower Court and the appeal filed against the same was dismissed. In revision petition before the Hon'ble High Court, the Hon'ble Court was astonished to see as to how an employee had ousted the owner of the shop and gave option to the accused to get the receiver appointed or to enter into an auction amongst themselves. Navjit Singh and Inderjit Singh gave bid of Rs.25,000/- per month, whereas the complainant gave the bid of Rs.30,000/- per month. Accused were trapped as they had played trick with the Court and revision petition was rendered infructuous. Navjit Singh being the employee was entrusted with the shop and the utensils worth more than Rs.3

lacs. He had dishonestly misappropriated the property and had controverted the same for his own use and prayed for registration of the case. On the basis of written application having been filed, after probing into the matter and after seeking the opinion of DA Legal, the case was lodged against the accused.

The challan having been presented by the investigating agency, copy thereof along with documents attached therewith, was supplied to the accused. A prima facie case was found and accordingly, the accused were charge-sheeted, to which they pleaded not guilty and claimed trial.

In order to substantiate the charges against the accused, prosecution examined as many as 10 PWs, besides producing on record other relevant documentary evidence. After closing the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating material available on record, was put to the accused. They denied the charges levelled against them, alleged false implication and pleaded complete innocence. In their defence evidence, accused produced copy of judgment dated 19.11.2009 as Ex.D1 and closed their evidence.

After hearing both the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the prosecution failed to prove its case beyond reasonable shadow of doubt. Accordingly, giving the benefit of doubt, accused were acquitted of the charges framed against them, vide impugned judgment of acquittal dated 15.09.2010 passed by the learned Judicial Magistrate 1st Class, Ludhiana.

Feeling aggrieved, State as well as complainant filed their separate appeals against the abovesaid impugned judgment of acquittal. However, both

these appeals came to be dismissed by learned Additional Sessions Judge, Ludhiana, vide his common judgment dated 23.07.2013. Hence this criminal revision petition, at the hands of the complainant.

Learned counsel for the complainant-petitioner submits that both the learned Courts have misdirected themselves while passing their respective impugned judgments. He further submits that there was cogent and convincing evidence on record, which was sufficient to record conviction of the accused-respondents. However, since both the learned Courts have failed to appreciate the evidence in the correct perspective, the impugned judgments have resulted in miscarriage of justice and the same are liable to be set aside. In support of his contentions, learned counsel for the petitioner places reliance on two judgments of the Hon'ble Supreme Court in **Syed Askari Hadi Ali Augustine Imam and another Vs. State (Delhi Admn.) and another, 2009 (2) RCR (Crl.) 520** and **M.P. Peter Vs. State of Kerala and others, 2009 (3) RCR (Crl.) 459**. He prays for setting aside the impugned judgments, by allowing the present criminal revision 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 contentions raised, this Court is of the considered opinion that instant one is not a fit case warranting interference at the hands of this Court, while exercising its revisional jurisdiction, for the following more than one reasons.

A combined reading of both the impugned judgments would show that both the learned Courts have recorded their respective cogent findings, before arriving at their judicious conclusions. The documentary as well as oral

evidence brought on record, was appreciated in the correct perspective. None of the Courts has been found to have committed any error of law, while passing their respective impugned judgments, because of which the impugned judgments deserve to be upheld.

So far as the judgments relied upon by the learned counsel for the petitioner are concerned, there is no dispute about the law laid down therein. However, on perusal of the cited judgments, none of them has been found of any help to the petitioner, being distinguishable on facts. It is the settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

It is the settled principle of law that wherever two views are possible, the view which goes in favour of the acquittal, deserves to be adopted by the Courts. It is not even the argued case on behalf of the petitioner that the view taken by the learned trial Court as well as by the learned Additional Sessions Judge was not one of the possible views. In this view of the matter, it can be safely concluded that the impugned judgments of acquittal do not suffer from any illegality and the same deserve to be upheld, for this reason also.

The view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in the case of **Arulvelu & anr. vs. State represented by the Public Prosecutor and anr. 2009(4) RCR (CrI.) 638.** The relevant observations made by the Hon'ble Supreme Court in para Nos.39, 40

and 41 in the case of Arulvelu (supra) read as under:

“In Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450, a two Judge Bench of this Court of which one of us (Bhandari, J.) was a member had an occasion to deal with most of the cases referred in this judgment. This Court provided guidelines for the Appellate Court in dealing with the cases in which the trial courts have acquitted the accused. The following principles emerge from the cases above:

- 1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.*
- 2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.*
- 3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.*
- 4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.*

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

40. This Court in a recently delivered judgment State of Rajasthan v. Naresh @ Ram Naresh 2009 (11) SCALE 699 again examined judgments of this Court and laid down that "An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused. This Court has dealt with the scope of interference with an order of acquittal in a number of cases."

41. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."

The law laid down by the Hon'ble Supreme Court in **Arulevlu's** case (supra) has also been followed by a Division Bench of this Court in the case of **State of Haryana v. Aman Kumar and another 2012 (3) RCR (Crl.) 330** and judgment dated 2.11.2012 passed by this Court in **CRM-A- 284-MA-**

2011 (Baljeet Singh v. State of Punjab and others).

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court in **Arulvelu's** case (supra), it is unhesitatingly held that the learned Courts were well-justified on facts as well as in law, for passing the impugned judgments of acquittal and the same 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 the 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, instant criminal revision petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

17.08.2015
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