

CRR-397-2013

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

CRR-397-2013 (O&M)
Date of decision: 27.08.2015

Abdullah

.....Petitioner

Versus

Suleman and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

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

SABINA, J

Respondent No.1 had faced trial in a complaint filed by the petitioner under Section 500 of the Indian Penal Code, 1860. Trial Court vide order dated 05.06.2010 ordered the acquittal of respondent No.1. The said order was upheld in appeal by the Appellate Court vide order dated 19.04.2012. Hence the present petition.

Learned counsel for the petitioner has submitted that the Courts below had erred in ordering the acquittal of respondent No.1.

Case of the complainant, in brief, was that respondent No.1 had moved an application before the police against him (complainant) that he had to recover Rs.35,000/- from him. The complaint moved by respondent No.1 was found to be false. On 02.11.2003, complainant came to know

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that posters had been affixed at bus-stand Malerkotla against him. The contents in the said posters as reproduced in the judgment of the trial Court read as under:-

“A cheater/fraud man namely Abdullah @ Fauji is running the business of Commission Agent at Vegetable Market, Malerkotla in shop No.2, who uses to usurp the money of innocent people by taking them in his confidence. All the vegetable seller should not go to him in order to sell their vegetables.”

The case of the complainant was on account of the posters affixed by respondent No.1, his reputation had been lowered in the eyes of his friends and other relatives. In order to prove his case, petitioner led his evidence. The learned Appellate Court while dismissing the appeal has held that from the evidence led by the complainant, it was not proved that in fact respondent No.1 had pasted the posters. Rather, as per CW-3, he had seen two persons pasting the posters at the main gate of the vegetable market and the said persons had run away. The said witness had not stated that in fact posters had been pasted by respondent No.1. The learned Appellate Court rightly held that in case respondent No.1 wanted to defame the petitioner, he would not have got his own name printed on the posters. The reasons given by the

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Appellate Court while dismissing the appeal are sound reasons and call for no interference by this court.

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

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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

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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”

Dismissed.

August 27, 2015
kapil

(SABINA)
JUDGE