

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

**CRR No. 1339 of 2015 (O&M)
Date of Decision: 13.07.2015**

Rambir Singh

.....Applicant

Vs.

Daljit Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Sailender Singh, Advocate
for the petitioner.

- 1. To be referred to the Reporters or not?**
- 2. Whether the judgment should be reported in the Digest?**

RAMESHWAR SINGH MALIK J.

Feeling aggrieved against the impugned judgment dated 1.10.2014 passed by the learned Sessions Judge, Jhajjar, whereby the impugned judgment of acquittal dated 3.12.2013 passed by the learned Additional Chief Judicial Magistrate, Jhajjar, acquitting the respondents herein, was upheld, complainant has approached this Court by way of instant criminal revision petition.

Brief facts of the case, as recorded by the learned Sessions Judge in para 2 to 6 of the impugned judgment, are that on 29.4.2004, complainant filed the complaint in the Court of Chief Judicial Magistrate, Jhajjar, who on 7.5.2004 exercising his power under Section 156 (3) of the Code of Criminal Procedure ('Cr.P.C.' for short), sent the same to the SHO, Police Station, Jhajjar for

investigation. On the basis of complaint, on 7.8.2004 SHO registered an FIR (Ex.PW-4/A). Petitioner, in his complaint (EX.PW/3-B) alleged that in the year 2001-2002, he was posted as a regular Lecturer in Government Polytechnic, Narnaul, whereas accused namely Daljit was posted as Ad hoc Lecturer in the said college and was occupying the government quarters. As the petitioner was senior to accused Daljit, the latter had to vacate the government quarter which had been allotted to him. Accused Daljit had delivered the possession of the quarter to the petitioner after a lot of resistance and also challenged the allotment in his favour in the Hon'ble High Court. Accordingly, accused-Daljit got annoyed with the petitioner and had threatened him with due consequences. Petitioner had also made a complaint in writing to the Principal of Government Polytechnic, Narnaul. Later on, he was transferred to Government Polytechnic, Jhajjar. In the meantime, accused-Daljit also came to be transferred to the said College. Accused-Daljit, in connivance with his friend Dharambir who was also posted as a Lecturer in the said college, started misbehaving with the petitioner on one pretext or the other. On 1.3.2004, the Principal of the College called the petitioner to his office and at about 12:45 P.M., when he came out of the office of Principal, Daljit and Dharambir started beating him. Accused Daljit picked up a chair and caused injuries to him with it. The chair struck his left shoulder resulting the dislocation of his left shoulder. Accused also gave him fist blows. Satyawan-PW5 rescued him. Accused-Daljit also threatened to eliminate him. He got himself examined at Civil Hospital, Jhajjar, from where he was referred to

PGIMS, Rohtak, where he was subjected to radiological examination which confirmed the dislocation of his left shoulder. On 2.3.2004 at about 7:00 P.M., police officials of Police Post City, Jhajjar, recorded his statement on the basis of which they registered a DDR. However, the police, under the pressure of the accused did not register the FIR, instead the police initiated the proceedings under Sections, 107/151 Cr.P.C. against the accused. On 12.3.2004, petitioner sent a complaint through registered post to the Superintendent of Police, Jhajjar. However, the police did not take any action. Having been left with no other option, complainant moved the complaint before the court.

The police carried out the investigation and filed the challan in the court of learned ACJM, Jhajjar, who charged the accused under Sections 323/325/506 read with Section 34 of the Indian Penal Code ('IPC' for short) and tried them. As mentioned above, vide impugned judgment, the ACJM, Jhajjar, acquitted the accused. Aggrieved by the judgment of acquittal, petitioner filed his appeal. At the trial, prosecution examined Dr. Bijender as PW-1, Dr. Jitender as PW2, Rambir as PW3, ASI Attar Singh as PW4, Satyawan as PW5, SI Rajender Singh as PW6 and SI Krishan Kumar as PW7.

The evidence against the accused was confronted to them and their statements under Section 313 Cr.P.C. were recorded. Accused were afforded the opportunity to lead evidence in defence. Accused examined Constable Parveen Kumar as DW1, DSP Tika Ram as DW2, Ajay Kumar, Clerk as DW3, Vijay Kumar, Vice

Principal as DW4 and Rakesh Kumar as DW5 in their defence.

After hearing learned counsel for both the parties and going through the evidence brought on record, learned trial court came to the conclusion that prosecution has failed to bring home guilt against the accused persons. Consequently, giving benefit of doubt, accused were acquitted of the charges framed against them, vide impugned judgment of acquittal dated 3.12.2013. Feeling aggrieved, complainant-petitioner filed his appeal which also came to be dismissed by the learned Sessions Judge, Jhajjar, vide impugned judgment dated 1.10.2014. Hence this criminal revision petition.

Learned counsel for the petitioner submits that both the learned courts below have misdirected themselves, while passing the impugned judgments. He further submits that prosecution has duly proved its case, by leading cogent and convincing evidence which was sufficient to record the conviction of the accused-respondents. However, since the learned courts below failed to appreciate the evidence in correct perspective, the impugned judgments of acquittal have resulted in miscarriage of justice. He prays for setting aside the impugned judgments of acquittal, 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 arguments advanced, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, present 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 one, which are being recorded hereinafter.

A combined reading of both the judgments of acquittal would show that each and every relevant aspect of the matter has been discussed in detail and appreciated in correct perspective, by both the learned courts below, before recording their cogent findings. Since none of the impugned judgments has been found to be suffering from any illegality much less patent illegality, the same deserve to be upheld.

It is the settled proposition of law that whenever two views are possible, the view which goes in favour of the acquittal is to be adopted by the courts, as held by the Hon'ble Supreme Court in ***Arulvelu & anr. vs.State represented by the Public Prosecutor and anr. 2009(4) RCR (Crl.) 638.*** The law laid down by the Hon'ble Supreme Court in the case of Arulvelu (supra), has been further 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

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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

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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 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 Page 16 16 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."

During the course of arguments, learned counsel for the petitioner could not point out any jurisdictional error or patent illegality in either of the impugned judgments of acquittal passed by both the learned courts, so as to convince this Court to take a different view than the one taken by the learned courts below. In such a situation, no interference is warranted at the hands of this Court and the impugned judgments 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 present criminal revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference is made out.

Resultantly, present criminal revision petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

13.07.2015
Ak Sharma