

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRR-1388-2014

Date of decision:8.10.2015

Mohinder Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

Present: Mr.Jagjit Gill, Advocate for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Present criminal revision petition, at the instance of complainant, is directed against the impugned judgment dated 25.2.2014 passed by learned Additional Sessions Judge, Sirsa, whereby appeal of the accused-respondents, against the judgment of conviction dated 29.11.2011 and order of sentence dated 30.11.2011 passed by the learned Sub-Divisional Judicial Magistrate, Ellenabad, was allowed and conviction of the respondents was set aside.

Brief facts of the case, as noticed by the learned appellate court in para 2 of its impugned judgment, are that one Mohender Kumar (petitioner herein) moved an application Ex.P5 to the police of Police Station Rania, alleging that he was working as a commission agent in Village Bani since last several years by the name and style of M/s Ram Kumar Chabli Dass. His firm, which was a sole proprietorship firm, had been appointed as government agent of CONFED and was its billing-cum-payment agent. He was dealing with M/s Prabhu Ram Jagdish Kumar since the last 5-6 years. The said firm had floated a bogus firm on 16.4.2003 with

accused Parmod Kumar (herein respondent No.2) as a Sole Proprietor and the firm had applied for sale tax number on the same day but because it could not produce a guarantor or a witness as per rules, therefore, it had not been allotted a sales tax number. On 16.04.2003 itself, accused Jagdish Kumar(herein respondent No.3) proprietor of M/s Prabhu Ram Jagdish Kumar had allegedly sold 1350 quintals of wheat by the name of M/s Pir Kamaria Trading Company to CONFED through its purchaser Ranbir Singh and there was an entry in the register in this regard. In order to deliver the 1350 quintals of wheat, Prabhu Ram Jagdish Kumar had taken the bags from the firm of the complainant. Out of 1350 quintals of wheat, 525 quintals of wheat were lifted on 23.4.2003 but a cheque of Rs.8,20,000/- bearing No.798276 was issued in the name of bogus firm M/s Pir Kamaria Trading Company on the same day. Accused Jagdish Kumar was running Pir Kamaria firm which was a bogus firm and the cheque was taken by Jagdish Kumar and he had also received 3000 empty bags from the complainant and issued receipt in this regard under the stamp of M/s Prabhu Ram Jagdish Kumar. When the complainant asked for lifting of remaining wheat, Jagdish Kumar assured to get the same lifted shortly. Jagdish Kumar kept avoiding the issue, as a result of which, the complainant became suspicious. Thereafter, complainant came to know that M/s Peer Kamaria Trading Company was a bogus firm and both the firms were being run by Jagdish Kumar. Complainant was convinced that accused Jagdish Kumar had misappropriate the official wheat, i.e. 825 quintals of wheat. Even at the time of auction of the wheat, the bid was given by accused Jagdish Kumar which was evident from the auction proceedings which bore the signatures of Jagdish Kumar. The receipt issued at the time of delivery of

the bags also bore the signatures of Jagdish Kumar, therefore, it was evident that Jagdish Kumar had misappropriated the official wheat, i.e. 825 quintals, amounting to Rs.5.00 lacs along with the bags which costs Rs.31,000/-.

On the basis of above-said complaint, FIR was registered against the accused. Investigation was set into motion. Statements of the witnesses were recorded. After completion of all usual formalities of necessary investigation, challan under Section 173 (2) Cr.P.C was presented only against accused Parmod in the Court for trial. Thereafter, complainant-petitioner moved an application under Section 190 Cr.P.C. for taking action against accused Jagdish Kumar. The said application was allowed and accused Jagdish Kumar was also summoned to face trial for the commission of offence under Sections 406 and 120-B IPC. Requirement of Section 207 Cr.P.C. was complied with.

Finding a prima facie case, learned trial Court framed the charges against the accused for commission of offences under Sections 406 and 120-B IPC. The accused pleaded not guilty and claimed trial. The prosecution, with a view to prove its case, produced as many as 18 prosecution witnesses, besides placing on record other documentary evidence.

On closing of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating material was put to the accused. They denied the allegations, alleged false implication and pleaded complete innocence. However, the accused did not lead any defence evidence.

After hearing 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 has proved its case bringing home the guilt against the accused. Accordingly, both the accused were convicted for the offences punishable under Sections 120-B and 406 IPC, vide judgment dated 29.11.2011. Thereafter, vide order of sentence dated 30.11.2011, convicts were sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.1,000/- each for commission of offence punishable under Section 406 IPC and in default of payment of fine, they shall undergo simple imprisonment for a period of ten days. The accused were further sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.1,000/- each for the commission of offence punishable under Section 120-B IPC and in default of payment of fine, they shall undergo simple imprisonment for a period of ten days. However, both the sentences were ordered to run concurrently.

Dissatisfied, the impugned judgment of conviction and order of sentence was challenged by the accused, by way of appeal, which came to be allowed by the learned Additional Sessions Judge, vide impugned judgment dated 25.2.2014, acquitting the accused. Hence this criminal revision petition, at the hands of the complainant.

Learned counsel for the petitioner submits that the learned trial Court rightly convicted the accused. The prosecution has brought on record cogent and convincing evidence, which was rightly found sufficient to record conviction. However, the learned Additional Sessions Judge fell in serious error of law, while passing the impugned judgment of acquittal and the same is liable to be set aside. He further submits that the cogent and convincing evidence available on record against the accused, was not

appreciated by the learned Additional Sessions Judge in the correct perspective, because of which the impugned judgment of acquittal has resulted in miscarriage of justice. He prays for setting aside the impugned judgment, by allowing the present criminal revision petition.

Having heard the learned counsel for the petitioner, 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 keeping in view the peculiar facts and circumstances of the case noticed hereinabove, instant one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its revisional jurisdiction, which itself is a limited one. To say so, reasons are more than one, which are being recorded hereinafter.

A bare reading of the impugned judgment of acquittal passed by the learned Additional Sessions Judge would show that the documentary as well as oral evidence was appreciated in the correct perspective, before arriving at a judicious conclusion. Evidence brought on record was not found sufficient to record the conviction of the accused-respondents. Having said that, this Court feels no hesitation to conclude that the learned Additional Sessions Judge committed no error of law, while passing the impugned judgment of acquittal and the same deserves to be upheld.

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 (Crl.) 638**. The relevant observations made by the Hon'ble Supreme Court in para Nos.39, 40 and 41 in **Arulvelu's** case (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 appellate Court was well-justified on facts as well as in law, in passing the impugned judgment of acquittal and the same deserves 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 above-said observations made, instant criminal revision petition stands dismissed, however, with no order as to costs.

8.10.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE