

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH.

CRM No.9927 of 2013 in/and  
CRR No.529 of 2013 (O&M)  
Date of Decision : 1.10.2015

Smt. Devinder Kaur and another .....Petitioners

Vs.

Amrik Singh .....Respondent

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. Ranjit Saini, Advocate for Mr. Vaibhav Sharma, Advocate for  
the petitioners.

...

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

RAMESHWAR SINGH MALIK, J

**CRM No.9927 of 2013**

Applicants seek condonation of delay of 38 days in filing the  
revision petition.

After hearing learned counsel for the applicants, instant application  
is allowed for the reasons stated therein. Delay of 38 days in filing the revision  
petition is condoned.

CRM stands disposed of.

**CRR No.529 of 2013**

Instant criminal revision petition, at the hands of the complainant,  
is directed against the impugned judgement of acquittal dated 27.9.2012 passed  
by the learned Additional Sessions Judge, Patiala, whereby appeal of the

accused-respondents was allowed and the conviction recorded vide judgement of conviction dated 18.12.2010 passed by the learned Additional Chief Judicial Magistrate, Patiala, was set aside.

When the case came up for hearing on 5.10.2013, it was adjourned to 21.10.2013. Again on 13.1.2014, the case was adjourned to 10.2.2014 on the request made by learned counsel for the petitioner. Thereafter, on 27.11.2014, 18.12.2014, 30.3.2015 and 3.8.2015, none appeared on behalf of the petitioners, which prima facie shows that the petitioners are no more interested in pursuing the present petition. Under these circumstances, Sh. Ranjit Saini, Advocate, was requested to assist the court and he has graciously offered to assist the court.

Brief facts of the case, as noticed by the learned Additional Sessions Judge in para 2 of the impugned judgement, are that complaint was filed by the complainant u/s 420, 467, 468, 471, 409, 120-B of IPC. It was submitted that Pritam Singh and Amrik Singh accused No.1 and 2 are real brothers of Harbhajan Singh husband of complainant no.1 and father of complainant no.2. Harbhajan Singh was partner in business with Pritam Singh and Amrik Singh in firm styled as M/s Duni chand Ram Singh now styled as Ram Singh and sons. Harbhajan Singh had cash balance of Rs.95414.41 in the firm as per balance sheet. Devinder Kaur complainant also invested money in the same. Manmit Singh minor also invested the amount though his father and had balance of Rs.40332.99. Ram Singh father of Harbhajan Singh husband of complainant no.1 owned shop no.1 situated at Sher-e-Punjab, Market Patiala and also owned another shop No.5859/1 situated at Lahori Gate, Patiala. Shop No.1 Sher-e-Punjab Market, Patiala has three floors i.e. ground floor, first floor and second floor in the year 1983. There was chobara on the first floor in the

year 1983 in shop no.1. Similarly there was three floors of shop No.5859/1 situated in Lahori Gate, Patiala in the year 1983 i.e. ground floor, first floor and second floor. Dr. Gurcharan Singh Batra is another brother of Harbhajan Singh. Dr. Gurcharan Singh and Harbhajan Singh filed suit for declaration wherein it was averred that Dr. Gurcharan Singh was owner in possession of shop no.5859/1 situated at Lahori Gate Patiala to its entirety and similarly it was also averred in the said suit that Harbhajan Singh husband of the complainant no.1 was the owner in possession of shop no.1 situated at Sher-e-Punjab Market, Patiala to its entirety. The said suit as decreed against Ram Singh on 9.2.1983 and Dr. Gurcharan Singh and Harbhajan Singh became owners in possession of their respective shops to its entirety as per said judgement and decree dated 9.2.1983.

Harbhajan Singh s/o Ram Singh s/o Duni Chand husband of complainant no.1 and father of complainant No.2 died on 17.10.1986 whereas Ram Singh s/o Duni Chand died on 9.9.1995. The complainant is an illiterate lady and complainant no.2 was minor, aged about 6 years at the time of death of Harbhajan Singh. Ram Singh gave 1/3 share in H.No.6288/1 to Manmit Singh situated at Manshahia Street, Lahori Gate Patiala and complainant No.2 is living alongwith complainant no.1, her mother and his sister Sanmit Kaur in the said house. After the death of Harbhajan Singh complainant nos.1 and 2 came into possession of shop no.1 to its entirety. Complainant asked accused nos.1 and 2 to furnish the account to them of the shop. However, accused nos.1 and 2 showed the sale deed dated 9.5.1995 stated to have been executed by Ram Singh and Pritam Singh in favour of Amrik Singh alleging that the chobara situated on the first floor of shop no.1 and the second floor of the said shop had already been sold. The husband of complainant no.1 was owner in possession of

the said shop to its entirety. Pritam Singh accused no.1 and Amrik Singh in conspiracy with Sukhbir Singh and Sarwan Singh accused nos.3 and 4 and Ram Singh deceased dishonestly and fraudulently cheated the complainants by forging the sale deed dated 9.5.1995. The sale deed is forged document. Thereafter Amrik Singh accused no.2 dishonestly and fraudulently used the sale deed dated 9.5.1995 as genuine and further created the sale deed dated 30.7.1997 registered on 4.8.1997 in favour of Rachhpal Singh and Gurjit Singh accused nos.5 and 6 in conspiracy with them and also in conspiracy with Jaspal Singh and Mohinder Singh attesting witnesses of the said deed. Even the unregistered Will dated 25.12.1991 purported to have been signed by Ram Singh was also created. The amount which was invested by Harbhajan Singh and complainant nos.1 and 2 in business in M/s Duni Chand Ram Singh now styled as M/s Ram Singh and sons have been misappropriated. Thus the accused have committed criminal breach of trust with the complainant. Hence, the complaint was filed.

On closure of complainant's 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. Accused opted to lead evidence in their defence.

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-respondent was recorded, vide judgement of conviction and order of sentence dated 18.12.2010. Thereafter, vide order of sentence dated 18.12.2010,

the accused-respondent was sentenced as under :-

“ The accused Amrik Singh is sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of Rs.2000/- under Section 420 IPC. In default of payment of fine, the accused Amrik Singh has to further undergo rigorous imprisonment for six months.”

The convict-respondent filed his 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 27.9.2012. Hence, this revision petition, at the instance of the complainant.

Learned counsel for the petitioners submits that the respondent-convict was not liable to be acquitted. He further submits that since the learned Additional Sessions Judge has failed to appreciate the offences committed by the respondent-convict, the impugned judgement is liable to be set aside. The learned trial court rightly convicted the respondent. He prays for setting aside the impugned judgement, by allowing the present petition.

Having heard learned counsel for the petitioners 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, Patiala, 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-respondent 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-respondent. In this regard, the relevant observations made by the learned Additional Sessions Judge in the impugned judgement, which deserve to be noticed here, read as under :-

“ The complainant also admitted that he had constructed the intervening wall. From the evidence on record it seems that only ownership of ground floor of the shop was given to the deceased Harbhajan Singh as had Ram Singh given the entire shop alongwith first and second floor then the possession would have been with deceased Harbhajan Singh in the year 1982 itself. Though the CW-2 has stated that the family was joint but that deposition is not believable as the properties were being transferred by way of collusive decree and by way of sale deed within the family in the year 1983 and thereafter. Even it is the case of the complainant that in the firm also the family members had their respective share.

Thus it cannot be held that the present appellant had defrauded the complainant by getting the sale deed executed from his father Ram Singh regarding the chobara of shop no.1. Even otherwise there is no evidence at all to hold that the appellant had got sale deed executed from his father. There is no evidence on record that signatures of Ram Singh are forged and rather handwriting expert was examined by the appellant to prove that the sale deed Ex.P-1 bears the signatures of Ram Singh. Even if it is assumed for the sake of arguments that Harbhajan Singh was declared to be owner in possession of the shop in its entirety then also the appellant cannot be held guilty in the present case as the sale deed has been executed by Ram Singh himself. It is well settled proposition of law that in criminal case the prosecution/complainant has to prove its case beyond shadow of reasonable doubt and the accused cannot be convicted on the basis of presumptions. As stated above in the present case the complainant failed to prove its case against the appellant beyond shadow of reasonable doubt. Thus the appellant is liable to be acquitted by giving him benefit of doubt.”

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 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 reappreciate 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-respondent. 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.

1.10.2015  
GS

(RAMESHWAR SINGH MALIK)  
JUDGE