

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2647-2014 (O&M)
Date of decision: 13.10.2015

Kapil Dev

... Petitioner

Vs.

State of Punjab and ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Ramesh Sharma, Advocate
for the petitioner.

Mr. K.D. Sachdeva, Addl. AG, Punjab.

Mr. Nikunj Dhawan, Advocate for
Mr. Harsh Aggarwal, Advocate
for respondents No.2, 3 & 5.

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.

Feeling aggrieved against the impugned judgment dated 11.01.2013 passed by learned Additional Sessions Judge, Ludhiana, whereby his appeal was dismissed, upholding the impugned judgment of acquittal dated 15.03.2012, passed by learned Sub Divisional Judicial Magistrate, Jagraon, complainant has approached this Court, by way of instant criminal revision petition.

Brief facts of the case, as recorded by learned Additional Sessions Judge in para 4 of the impugned judgment, are that the criminal law

was set into motion in the present case on an application bearing No.1165 dated 31.07.2001, having been filed by Kapil Dev complainant before the Senior Superintendent of Police, Jagraon that he and Hari Rattan were partners in M/s Guru Filling Station, Village Kamalpura, Ludhiana. He met with an accident and in his absence, his brother Hari Rattan was looking after the Filling Station. Hari Rattan expired on 18.11.2000 and after his death, the control of Filling Station was given to his son Vikrant @ Anu and his wife Kanchan. Sanjeev Kumar @ Bobby was working as Salesman whereas Amir Chand was working as Manager at the said Filling Station. At the time of taking the control of the Filling Station, 8 lacs litre of petrol was lying with the Filling Station. The abovesaid persons were selling the petrol and diesel in accordance with the rules of the I.O.C. and used to keep the profits with them. But they did not provide the accounts of sale of petrol and diesel and profit thereof. Besides this, the abovesaid persons had taken loan from various persons in the name of Guru Nanak Filling Station, amounting to Rs. 7 lacs which was used by them, for their personal use, which they were not entitled few days back, the complainant asked the accused to give the account and to pay the share of the complainant, but they did not show any (not legible) and on the next day, the accused persons stole the accounts books including cash book, ledgers, route permit, RC, insurance of tanker No.PIP 5319 and BP 10T 9019. They also stole a draft of Rs.25,000/- bearing No.159260 drawn in favour of B.P.C. Ltd. and for Rs.25,000/- and cash amount of Rs.2 lacs. Besides this, they also misused the CC limit for Rs.1,00,000/- which was obtained from S.B.I., Jagraon. In this manner, the accused persons, after hatching conspiracy with an intention to cause wrongful loss to the

complainant, had misappropriated the amount of about Rs.10 lacs and they had stolen the account books in order to save themselves and with a motive to destroy them. On the basis of this application, challan against the accused was presented under Sections 406, 420 of the Indian Penal Code by officer of P.S. Jagraon.

The challan having been presented, copy thereof along with documents attached therewith, was supplied to the accused as envisaged under Section 207 of the Code of Criminal Procedure ('Cr.P.C.' for short). 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 09 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. Opting to lead defence evidence, accused Amir Chand examined himself as DW1.

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 failed to bring home the guilt against the accused. Accordingly, accused were acquitted of the charges framed against them, vide impugned judgment of acquittal dated 15.03.2012.

Dissatisfied, the impugned judgment of acquittal was challenged by the complainant, by way of appeal which also came to be dismissed by

learned Additional Sessions Judge, Ludhiana vide impugned judgment dated 11.01.2013. Hence this criminal revision petition, at the hands of complainant.

Learned counsel for the petitioner submits that the prosecution brought cogent and convincing evidence on record, which was sufficient to record conviction of the accused persons. However, since the learned Courts have failed to appreciate the evidence in correct perspective, the impugned judgments have resulted in miscarriage of justice. He prays for setting aside the impugned judgments, by allowing the present criminal petition.

On the other hand, learned counsel for the accused-respondents No.2, 3 & 5 submits that the learned Courts have rightly passed their impugned judgments. Each and every relevant aspect of the matter has been considered and appreciated in its corrective perspective by the learned Courts, while passing their respective impugned judgments. He prays for dismissal of 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 combined reading of both the impugned judgments would show that the learned Courts have discussed, considered and appreciated each and every relevant aspect of the matter, before arriving at their judicious

conclusions. Oral as well as documentary evidence was appreciated in the correct perspective. Having said that, this Court feels no hesitation to conclude that the learned Courts have committed no error of law, while passing their respective impugned judgments of acquittal and the same deserve 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 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 **Arulvelu'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, in 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

13.10.2015
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