

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3311-2014 (O&M)
Date of decision: 01.10.2015

Gurmukh Singh

... Petitioner

Vs.

Shailinder Bhardwaj and ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Gautam Kaile, Advocate for
Mr. Rahul Vats, Advocate
for the petitioner.

Mr. J.S. Saneta, Advocate
for respondent No.1.

Mr. H.S. Dhillon, Advocate
for respondent No.2.

Mr. Manoj Kumar Sangwan, DAG, Haryana.

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 02.07.2014 passed by learned Additional Sessions Judge, Kurukshetra, whereby appeal of the petitioner was dismissed, upholding the impugned judgment of acquittal dated 18.05.2013, passed by learned Judicial Magistrate 1st Class, Pehowa, petitioner 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 3 of the impugned judgment, are that on 14.08.2007, a complaint was received from the office of Superintendent of Police, Kurukshetra to the effect that respondents cheated the complainant by dishonestly inducing him to deliver ₹8,95,000/- on the pretext of sending him to Italy, that on 13.05.2007, complainant gave ₹5,95,000/- along with his passport to respondents No.1 & 2 in the presence of Prem Singh and Amar Singh and thereafter, the complainant was in contact with the respondents on telephone; that on 03.06.2007, the complainant arranged ₹3,00,000/- from his relative and at the house of respondent Shailinder, gave this amount to the respondents in the presence of Surmukh Singh and Amar Singh and Ram Murti. Thereafter, Mohinder Singh took the complainant to Delhi on 07.06.2007 for arranging Visa. However, respondent Mohinder left Delhi due to some problem and assured the complainant that he would come with accused Shailinder. Both the accused-respondents did not turn up and thereafter, the complainant visited the house of accused Shailinder with his luggage worth ₹15,000/-. However, respondent Shailinder assured him that in case the abovesaid purpose was not fulfilled then both the accused would return his money, that neither the money nor passport and luggage of the complainant was returned by the accused and they threatened to kill the complainant in future. On the basis of this statement, case was registered. After registration of case, police started investigation. On culmination of investigation, report under Section 173 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) against the accused was submitted to the Court for

trial.

The challan having been presented, copies thereof were supplied to the accused, as envisaged under Section 207 Cr.P.C. A prima facie case was found to be made out and accordingly, the accused were charge-sheeted. Accused pleaded not guilty and claimed trial.

In order to substantiate the charges against the accused, prosecution examined as many as 10 PWs, besides producing other relevant documentary evidence. On closure of 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. He denied all the allegations, pleaded false implication and claimed complete innocence. In their defence, accused also tendered Ex.D1 i.e. report of D.S.P.

After hearing the learned counsel for both the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the prosecution has failed to bring home the guilt against the accused. Accordingly, the accused were acquitted of the charges framed against them, vide impugned judgment of acquittal dated 18.05.2013.

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, vide impugned judgment dated 02.07.2014. 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 submit that the learned trial Court has rightly passed the impugned judgment of acquittal. There was no cogent and convincing evidence which could have been said to be sufficient to record the conviction of the accused. This was the reason that the learned Additional Sessions Judge rightly dismissed the appeal of the complainant, upholding the impugned judgment of acquittal. They pray for dismissal of the present criminal revision petition.

Having heard the learned counsel for the parties, 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 (Cr1.) 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, for 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

01.10.2015
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