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

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Date of Decision: 27.07.2015

Kaptan Singh Secretary

... Petitioner(s)

Versus

Mehar Singh and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. Arshinder Singh Bhinder, Advocate,
for the petitioner.

Paramjeet Singh, J. (Oral)

Instant revision has been filed challenging the judgment dated 02.12.2014 passed by the Additional Sessions Judge, Tarn Taran whereby order dated 09.01.2012 passed by the Judicial Magistrate Ist Class, Tarn Taran, acquitting respondent No.1-Mehar Singh has been affirmed and appeal filed by the petitioner has been dismissed.

The brief facts of the prosecution case are that B.S.Jatana, District Manager, moved D.O. letter bearing No.29-D dated 07.01.2005 to S.S.P.Tarn Taran, for registration of case, wherein he alleged that Balwinder Kaur wife of Mehar Singh, resident of H.No.15/448 Tarn Taran took a loan of ₹24,000/- from Housefed on 14.05.1990 for the construction of house and against that loan, she mortgaged her 10 marlas

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plot vide mortgage deed dated 25.09.1989 and Mehar Singh attested said mortgage deed as a witness. After taking loan from Housefed, Balwinder Kaur did not deposit even a single installment and on 31.12.2004, a sum of ₹1,89,037/- was due against the account of Balwinder Kaur including interest. During this period, Balwinder Kaur had died. When, Housefed demanded back that loan from her heir/husband Mehar Singh, he filed a civil suit in the court and sold the mortgaged plot even before decision of that civil suit and thus, Mehar Singh committed a fraud with Housefed by selling the said plot. Inquiry was got conducted and case was registered. Investigation was set into motion. The accused was arrested. After completion of investigation, challan was presented.

On finding, prima facie case, respondent-accused was charge-sheeted under Section 420 IPC, to which he pleaded “not guilty” and claimed trial.

In order to prove its case, the prosecution examined PW 1 Kaptan Singh, Secretary of Housefed. Thereafter, evidence of prosecution was closed by Court order despite availing last opportunities.

Statement of accused under Section 313 of the Code of Criminal Procedure (in short, 'the Code') was recorded. All the incriminating evidence appearing against the accused was put to him. He denied the same and pleaded false implication. However, the accused did not lead any evidence in his defence.

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The trial Court after appreciating the evidence on record, vide judgment dated 09.01.2012, acquitted the respondent-accused. Feeling aggrieved, the petitioner filed appeal before the lower Appellate Court which was also dismissed vide impugned judgment dated 02.12.2014. Hence, this revision.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner contended that both the courts below have wrongly appreciated the evidence. Both the courts below have not taken into consideration the official record proved by PW 1.

I have considered the contentions of learned counsel for the petitioner.

The trial Court has recorded following findings:

“8. In this case, the prosecution after availing so many opportunities could not conclude its evidence. Also, the prosecution has failed to examine the I.O. as such, the documents like ruqa, FIR, and other memos remain unproved on record and also by not examining the IO, the accused is deprived of his right to cross examine the witness in order to extract something for his support. Moreover, in the present case the complainant, who set into motion the criminal law, has not come forward to depose. Contrary to popular impression that it is frequent adjournments, which causes delay, but these adjournments are directly proportionate to the fact that usually witnesses do not

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come present to depose, as in the case in hand witnesses are not coming, and this way they are not cooperative with the Court to pave the way for expeditious trial. Also, there is no evidence on record against the accused which proves that the accused, present in the Court, has put his surety on the loan documents and that the loan in question was obtained in the presence of the accused as PW-1 stated in his cross-examination that the loan in question was not advanced through him and that he does not know that who has sanctioned the said loan and that the photocopy of the mortgage deed brought by him does not bear the photograph of Mehar Singh. So, when the loan was not advanced by PW-1 and neither he know as to who sanctioned the loan in question, it is not proved that the accused has put his surety on the loan documents and that the loan in question was obtained in the presence of the accused. Moreover, it is not proved on record that the surety deed bears the signatures of the accused as the prosecution has not got any expert opinion regarding the signatures of the accused and the same has not been matched with the standard signatures of the accused and no expert witness has been examined on record and this is a material dent in the prosecution story. Moreover, the original record has not been produced on record by the prosecution as PW-1 stated in his cross examination that he has not brought the original mortgage deed in the Court and that he has not brought the original surety deed of Mehar Singh. So, this creates dent in the prosecution story and makes the prosecution story suspicious. Also, there is no corroboration to the

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version of PW-1. Under these circumstances cracks appears in the prosecution version and it makes the case of the prosecution of doubtful nature and it is well settled law that the benefit of doubt should be given to the accused.

The lower Appellate Court while affirming the findings of the trial Court has recorded the following findings:

“10. In support of their case, prosecution simply examined Kaptan Singh, official witness. There is no evidence on record that accused/respondent put his surety on the loan documents and the loan was obtained by Balwinder Kaur in the presence of accused. Kaptan Singh admitted in his cross-examination that loan was not advanced through him and he was not aware, who sanctioned the loan. This witness further admitted that photo copy of mortgage deed brought by him did not bear photograph of Mehar Singh. Prosecution further failed to prove on record that surety deed so executed by accused, even bear the signature of accused, as prosecution failed to examine any expert opinion regarding signatures of accused and same were not matched with the standard signatures of accused and it caused a material dent in the prosecution story. PW 1 Kaptan Singh further admitted that original mortgage deed and surety deed was not brought on record. Prosecution failed to examine complainant Sh.B.S.Jatana and in the absence of corroboration to the version of PW1, no reliance could be placed on the testimony of Kaptan Singh. In the given set of circumstances, prosecution miserably failed to prove its case against accused and benefit of

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doubt certainly goes in favour of accused and the learned Trial Court rightly acquitted accused Mehar Singh, for which he was charge-sheeted and such finding is affirmed.”

Both the courts below have rightly held that the prosecution has failed to prove the fact that surety deed allegedly executed by accused, bears his signatures. The prosecution has not examined any expert witness for comparison of standard signatures of accused with disputed signatures. The instant revision has been filed by petitioner-Kaptan Singh, not by Housefed or its Manager being complainant. The Housefed or its Manager was the only competent authority to file revision or appeal.

Moreover, I am afraid, while exercising revisional jurisdiction, this Court cannot re-appreciate the evidence. The basic object behind Section 401 of the Code is to empower the high court to exercise the powers of an appellate court to prevent failure of justice in cases where the Code does not provide for appeal. The power, however, is to be exercised only in exceptional cases where there has been a miscarriage of justice owing to a defect in the procedure or a manifest error on the point of law, excess of jurisdiction, abuse of power, where decision upon which the trial court relied has since been reversed or overruled when the revision is being heard. In exercising the power of revision, which is discretionary, the court should always bear in mind the limitation that under the garb of exercising its powers of revision; it cannot exercise the power of appeal in the face of statutory prohibitions.

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This is not a case where an important piece of evidence has been left out from consideration by the courts below while deciding the case.

In view of above, I do not find any illegality or perversity in the impugned orders.

Dismissed.

27.07.2015
parveen kumar

(Paramjeet Singh)
Judge