

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

**CRR No. 988 of 2015 (O&M)
Date of Decision: 13.07.2015**

Boota Singh

.....Applicant

Vs.

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Ms. Himani Kapila, Advocate
for the petitioner.

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

RAMESHWAR SINGH MALIK J.

Instant criminal revision petition, at the hands of the complainant, is directed against the impugned judgment of acquittal dated 29.1.2014, passed by learned Sub Divisional Judicial Magistrate, Guruhar Sahai and also impugned judgment dated 10.11.2014 passed by learned Additional Sessions Judge, Ferozepur, dismissing the appeal of the complainant-petitioner, while upholding the impugned judgment of acquittal.

Brief facts of the case, as recorded by the learned Additional Sessions Judge in para 2 to 8 of the impugned judgment are that earlier complainant-Buta Singh and accused No.1 Sukhmander Singh were the partners of M/s Shiva Agro Industry, Guruharsahai. They were having other partners also at that time and

were having joint account in State Bank of Patiala, Guruharsahai. The accused-respondents No. 2 and 3 in connivance with each other withdrew an amount of ₹2,11,000/- from the said bank by forging signatures of Buta Singh and committed fraud with him. The amount was withdrawn by the accused by way of two cheques bearing No. 901113 dated 13.4.2004 for an amount of ₹1,16,000/- and another cheque bearing No. 901116 dated 1.5.2004 for an amount of ₹95,000/-. In fact, Buta Singh never signed those cheques for the withdrawal of the amount. Accused No.2-Ajay Kumar Sharma was working as a clerk with accused No.1 and being his employee, had also signed the cheques in token of receipt of the payment. Accused No.3 being Manager of the Bank was having knowledge that the cheques did not bear his signatures, but he helped accused No.1 in withdrawing the amount from the joint account and took active part in the conspiracy hatched by accused No.1 in connivance with other accused. After coming to know about the fraud, Buta Singh served a notice. Upon notice, Regional Manager and General Manager, in their reply stated that there might be some dispute between the partners of the firm but the cheques were valid and legal. However, the bank never tried to inquire about the matter and to compare the signatures of the cheques with the disputed cheques. Thereafter, various complaints were moved before the police but to no effect.

In preliminary evidence, the complainant examined CW1 Pawan, CW2 Sanjeev Sharma, Figner Print and handwriting expert. Complainant himself stepped into the witness box as CW3 and thereafter closed his evidence. On the basis of preliminary evidence,

accused No.1 and 2 were summoned by the learned trial court to face trial under Sections 420/467/120-B of the Indian Penal Code, 1860, ('IPC' for short), vide order dated 9.2.2010.

Having found a prima facie case against the accused, they were charge sheeted under Sections 420/467 IPC read with Section 120-B IPC to which they pleaded not guilty and claimed trial. In after charge evidence, complainant himself stepped into the witness box as CW1 and thereafter closed his evidence. Statements of accused under Section 313 Cr.P.C. were recorded wherein they pleaded false implication. In defence, accused examined DW1 Sukhraj Singh and thereafter, closed their evidence.

After hearing learned counsel for both the parties and going through the evidence brought on record, learned trial court came to the conclusion that petitioner-complainant has failed to bring home guilt against the accused persons. Consequently, complaint was dismissed and the accused were acquitted of the charges framed against them, vide impugned judgment of acquittal dated 29.1.2014. Feeling aggrieved, complainant-petitioner filed his appeal which also came to be dismissed by the learned Additional Sessions Judge, Ferozepur, vide impugned judgment dated 10.11.2014. Hence this criminal revision petition.

Learned counsel for the applicant submits that both the learned courts below have misdirected themselves, while not considering the true factual as well as legal aspect of the matter, thereby causing serious miscarriage of justice. He further submits that there was cogent and convincing evidence brought on record by

the petitioner-complainant, which was sufficient to record the conviction of the accused-respondents. However, since the learned courts below have failed to appreciate the evidence in correct perspective, the impugned judgments were not sustainable in law. He prays for setting aside the impugned judgments of acquittal, by allowing the present criminal revision petition.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the arguments advanced, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, present 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 one, which are being recorded hereinafter.

A combined reading of both the judgments of acquittal would show that each and every relevant aspect of the matter has been discussed in detail and appreciated in correct perspective, by both the learned courts below, before recording their cogent findings. Since none of the impugned judgments has been found to be suffering from any illegality much less patent illegality, the same deserve to be upheld.

It is the settled proposition of law that whenever two views are possible, the view which goes in favour of the acquittal is to be adopted by the courts, as held by the Hon'ble Supreme Court in ***Arulvelu & anr. vs.State represented by the Public Prosecutor and anr. 2009(4) RCR (Crl.) 638.*** The law laid down by the

Hon'ble Supreme Court in the case of Arulvelu (supra), has been further 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

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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 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 Page 16 16 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.”

During the course of arguments, learned counsel for the petitioner could not point out any jurisdictional error or patent illegality in either of the impugned judgments of acquittal passed by both the learned courts, so as to convince this Court to take a different view than the one taken by the learned trial court. In such a situation, no interference is warranted at the hands of this Court and the impugned judgments 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 present criminal revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference is made out.

Resultantly, present criminal revision petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

13.07.2015
Ak Sharma