

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1657-MA-2014 (O&M)

Date of decision:- September 05, 2016

KAMLESH

.....APPLICANT..

VERSUS

STATE OF HARYANA AND OTHERS

....RESPONDENTS..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Rajiv K. Saini, Advocate
for the applicant.

JASPAL SINGH, J.

CRM-33197-2017

For the reasons mentioned in the application, which is duly supported by an affidavit of the appellant, delay of 470 days in filing the appeal is condoned.

Main case

Vide this judgement, this Court shall dispose of application under Section 378 (4) of the Code of Criminal Procedure preferred by Kamlesh seeking special leave to appeal against the judgment of acquittal dated March 22, 2013 passed by Sub Divisional Judicial Magistrate, Narwana, District Jind (Haryana), in criminal case No. 217-1 of 2007, dated 24.10.2007, captioned as *“Kamlesh vs. Hari Singh and others”*, under Sections 420, 467, 468, 471, 506 and 120-B IPC.

2. The brief facts of the case are that the applicant filed complaint

case No.217-1 of 2007 submitting that the respondents and complainant are co-sharers in the joint land as mentioned in the complaint. It is further submitted that respondents in connivance with Sh. RP Malik, Advocate submitted a false, forged, fake and fabricated power of attorney of the complainant, her son Pawan, Sukhma and Kamlesh. In fact, they never served any notice in the partition proceedings nor they ever appeared in Court in the said case nor they ever engaged any counsel to appear on their behalf or to make any statement etc. in court and by producing forged and fabricated vakalatnama, respondents got order passed in their favour on 20.07.2004 for partition of land and have grabbed the property of complainant, her son Pawan, Sukhma and Kamlesh. As the respondents in collusion with their lawyer had committed the said forgery, an application in the police station, city Narwana was moved, but no action was taken against the accused, which coerced the petitioner to lodge the complaint.

3. After hearing the learned counsel for the complainant and appraisal of evidence adduced by the complainant, the respondents were summoned by the court vide order dated 02.06.2009 to face trial under Section 420 read with Section 34 IPC.

4. On finding a *prima facie* case under Section 420 read with Section 34 IPC, they were charge sheeted, to which they did not plead guilty and claimed trial.

5. On conclusion of the complainant's evidence, when incriminating circumstances appearing in it were put to respondents-accused for eliciting their explanation as required under Section 313 Cr.P.C., they denied the same, alleged false implication and pleaded innocence. However,

no evidence was led by the accused in their defence and closed it vide their separate statement(s).

6. After hearing learned counsel for the parties and appraisal of evidence brought on record by the parties, respondents/accused were acquitted of the charge vide judgment dated March 22, 2013.

7. Feeling aggrieved against the acquittal of respondents-accused, applicant-complainant preferred instant application seeking special leave to appeal to challenge the judgment/order of acquittal dated March 22, 2013.

8. The contention of learned counsel for applicant is that the judgment of acquittal dated March 12, 2013 is not sustainable in the eyes of law as the same is absolutely against the evidence available on file and settled canons of law. Ld. Magistrate has ignored and disbelieved the cogent and trustworthy evidence adduced by complainant without any cogent reason. Even, the documents placed and proved on record were also not taken into consideration by learned Magistrate while rendering the judgment of acquittal. Apart from it, mis-appreciation of evidence has resulted into miscarriage of justice. Thus, the applicant seeks indulgence of this Court and necessary permission be granted to the applicant/appellant to prefer an appeal.

9. After bestowing due consideration to the afore-said submissions made by learned counsel for applicant and appraisal of evidence as well as impugned judgment of acquittal, this Court is not in agreement with the various submissions made by learned counsel for the applicant/appellant.

10. Before proceeding to delve deep into the merits of the

submission(s) made by learned counsel for applicant, it would be desirable to consider the scope and jurisdiction of an appellate court to interfere with an order of acquittal.

11. Section 378 of the Code of Criminal Procedure provides that the complainant or aggrieved person may prefer an appeal to the High Court against an order of acquittal but sub-section 3 of Section 378 of the Code of Criminal Procedure explicitly envisages that no appeal under subsections (1) and (2) shall be entertained except with the leave of the High Court which is a stage between an order of an acquittal and consideration of the judgment by the Appellate Court on merits as in the case of a regular appeal. It depicts that a judgment of acquittal is annexed with a definite value, which cannot be ignored by the Court. A presumption of innocence attached to an accused stands further fortified or reinforced by an order of acquittal. No doubt, Appellate Court, is empowered to re-appreciate, review and re-consider evidence before it but this power is required to be exercised keeping in view relevant principles of law relating to review, reweighing and re-appreciating of evidence in order to come to independent conclusions. The scope of interference by an Appellate Court in an order of acquittal was laid down by the Hon'ble Apex Court in case ***Sanwat Singh v. State of Rajasthan***; 1961 SCR (3) 120 as follows:-

“The foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in Sheo Swarup case afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the

judgments of this Court, such as (i) “substantial and compelling reasons”, (ii) “good and sufficiently cogent reasons”, and (iii) “strong reasons”, are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified.”

12. This principle was further reiterated by the Hon'ble Supreme Court in case ***Govindaraju @ Govinda v. State by Sriramapuram P.S. and another***; AIR 2012 SC 1292.

13. In the light of the aforesaid observations, it is evident that there is no embargo in law to re-appreciate, re-look, re-weigh, re-view or re-consider the entire evidence which is the foundation of an acquittal. On scanning of the evidence on record, if acquittal is found to be erroneous, perverse and against settled cannons of law, it should be set aside.

14. Now, this Court has to appraise and inspect carefully whether impugned judgment of acquittal suffers from any illegality, infirmity or is founded on an erroneous appreciation of the evidence or is perfectly justified.

15. Adverting to the facts of the case in hand, the allegation unfolded by the complainant are that she did not execute any power of attorney in favour of Mr. R.P.Malik, Advocate, and no such power of attorney was filed in the Court. She further unfolded that Mr. R.P. Malik,

Advocate has conspired and colluded with the accused. The power of attorney was also brought into existence by forging her signatures but this allegation levelled by the complainant is without any cogent and convincing evidence. There is nothing on record to suggest that in any of the ways, Mr. R.P.Malik, Advocate has got the benefit. Moreover, it has also emerged on record that on the basis of forged power of attorney, Mr. B.S. Nain, Advocate was engaged as a counsel but to the utter surprise, he has not been examined as witness by the complainant. He can be termed to be one of the best and most material witness. He could have only disclosed to the Court as to who had appended the signatures on the power of attorney. Thus, in the absence of a material witness, an adverse inference is to be drawn against the complainant. Otherwise, also there is nothing on record to suggest that the complainant has suffered any kind of loss, especially, in the circumstances that the complainant preferred an appeal.

16. Aggrieved against the order regarding partition, before the Collector, Narwana, which has since been accepted. It was only thereafter, the respondents-accused filed revision petition before Commissioner, Hisar, which was accepted holding that the partition has been duly effected. It appears that the instant complaint is nothing but an outcome of the differences amongst the co-sharers on account of initiation of partition proceedings. Though, it has been alleged by the complainant that she had filed revision petition before the Financial Commissioner (Revenue) and it was accepted yet no document has been brought on record to establish it.

17. Moreover from the evidence available on file it stands amply proved that the partition proceedings have been duly effected that too, in the

presence of parties. It appears that due to the differences amongst the co-sharers, instant complaint had been filed in which the respondents-accused have rightly been acquitted. Thus, this court is of the considered view that there is no cogent or convincing reason to grant leave to appeal.

18. In the light of aforesaid discussion, this Court does not find any merit in the instant application. As such, the same stands dismissed. Consequently, the accompanying appeal also stands dismissed.

(JASPAL SINGH)
JUDGE

September 05, 2016
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No