

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

CRM-A-1801-MA-2015 (O&M)
Date of decision: 24.10.2016

Municipal Corporation, Hisar

...Applicant

Versus

Pardeep Kumar

...Respondent

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Dheeraj Chawla, Advocate for the applicant

SNEH PRASHAR, J.

CRM-36331-2015

The present application under Section 5 of the Limitation Act has been filed for condonation of delay of 136 days in filing the application seeking leave to file appeal.

For the reasons enumerated in the application, the same is allowed and the delay is condoned subject to all just exceptions.

CRM-A-1801-MA-2015

The present application for grant of leave to appeal has been filed against the judgment dated 29.10.2014, passed by the learned Chief Judicial Magistrate, Hisar whereby, respondent Pardeep Kumar was acquitted of the charge levelled against him.

Ram Kishan, who was authorised by the Municipal Corporation, Hisar filed a complaint against Pardeep Kumar that in

violation of the sanctioned site plan, the respondent was raising construction, which is against the provisions of Section 208 of the Haryana Municipal Act. The constructed building was inspected by Suresh Goyal, Engineer and report dated 11.12.2008 was submitted to Municipal Corporation Hisar. Thereafter, a notice under Section 208 of the Act dated 12.12.2008 was issued to the respondent to demolish the illegal construction / encroachment, which was raised against the building bye laws but he failed to do so.

On notice of accusation under Section 208 of the Act, he appeared and pleaded not guilty. To prove its case, the complainant examined PW1 Suresh Kumar M.E. And PW2 Ramesh Kumar, Assistant. Thereafter, statement of the petitioner under Section 313 of the Code of Criminal Procedure was recorded wherein he pleaded himself to be innocent. In defence, he examined Surender Kumar, Building Clerk as DW1.

After hearing the learned counsel for the complainant; the learned defence counsel and examining the evidence on the record, the learned trial Court acquitted the respondent herein.

Learned counsel contends that learned trial court had wrongly ignored the evidence on record and had erred in acquitting the accused -respondent. It had come in the statement of PW1 Suresh Kumar, Municipal Engineer that he had inspected the spot and had found that the building had been raised by the respondent violating the sanctioned site plan. The dispatch register maintained by the Municipal

Corporation indicated that notices dated 12.12.2008 and 9.1.2009 regarding illegal construction/ encroachment by the respondent had been dispatched to him from the office but the respondent had failed to respond to the same. It was thereafter that as per letter Ex.PW2/A, Municipal Corporation had authorised Ramesh Kumar, Clerk to file a complaint against the respondent.

I have heard the learned counsel for the applicant and have perused the case file.

In **Sunil Kumar Sambhudayal Gupta and others vs. State of Maharashtra 2011 (1) RCR (Criminal) 57** the Apex Court framed the guidelines for the appellate court to deal with the matter of “appeal against acquittal”, which are as under:-

“Appeal against Acquittal:

22. It is a well-established principle of law, consistently re-iterated and followed by this Court is that while dealing with a judgment of acquittal, an appellate court must consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. Even though the appellate court is entitled to consider, whether in arriving at a finding of fact, the trial Court had placed the burden of proof incorrectly or failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law; the appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may

be the more probable one. The trial court which has the benefit of watching the demeanor of the witnesses is the best judge of the credibility of the witnesses.

23. Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India. The nature of the offence, its seriousness and gravity has to be taken into consideration. The appellate court should bear in mind the presumption of innocence of the accused, and further, that the trial court's acquittal bolsters the presumption of his innocence. Interference with the decision of the Trial Court in a casual or cavalier manner where the other view is possible should be avoided, unless there are good reasons for such interference.

24. In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. A finding may also be said to be perverse if it is 'against the weight of evidence', or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (See: **Balak Ram & Anr. v. State of U.P.**, AIR 1974 SC 2165; **Shailendra Pratap & Anr. v. State of U.P.**, AIR 2003 SC 1104; **Budh Singh & Ors. v. State of U.P.**, AIR 2006 SC 2500; **S. Rama**

Krishna v. S. Rami Reddy (D) by his LRs. & Ors.,
AIR 2008 SC 2066; Arulvelu & Anr. v. State, (2009)
10 SCC 206; Ram Singh alias Chhaju v. State of
Himachal Pradesh, (2010) 2 SCC 445); and Babu v.
State of Kerala, (2010) 9 SCC 189).”

In the case in hand, learned trial Court while acquitting the respondent has recorded a finding that without there being any resolution, the Executive Officer, Municipal Corporation had issued the authority letter Ex.PW2/A which cannot sustain in the eyes of law. Apart from that no record could be produced by the petitioner- complainant to show that the notices allegedly sent to the respondent were actually served on him. No official was examined to prove the delivery of any of the notices to the respondent. From the close reading of the impugned judgment, no other view is possible. There is not even an iota of evidence against the present respondent, which could make out a prima facie case against him. No case for interference in the judgment of acquittal is made out.

In view of the above, there being no perversity or illegality in the impugned judgment passed by the learned trial Court whereby the respondent has been acquitted, the present application for leave to appeal is dismissed.

24.10.2016
 gsv

(SNEH PRASHAR)
JUDGE

Whether speaking / reasoned?
Whether reportable?

Yes / No
Yes / No