

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

CRL. REVISION No.2329 OF 2016 (O&M)
DATE OF DECISION : 28th SEPTEMBER, 2016

Kailash Nath

.... Petitioner

Versus

State of Haryana

.... Respondent

CRL. REVISION NO.2378 OF 2016 (O&M)

Madan Gopal

.... Petitioner

Versus

State of Haryana

.... Respondent

CRL. REVISION NO.2347 OF 2016 (O&M)

Ajit Pal

.... Petitioner

Versus

State of Haryana

.... Respondent

CRL. REVISION NO.2423 OF 2016 (O&M)

Gurdit Kumar

.... Petitioner

Versus

State of Haryana

.... Respondent

CRL. REVISION NO.2314 OF 2016 (O&M)

Sudhir Bansal & another

.... Petitioners

Versus

State of Haryana

.... Respondent

CRL. REVISION NO.2323 OF 2016 (O&M)

Vijay Kumar

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

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Present : Mr. Sanjay Jain, Advocate
Mr. Vivek Goyal, Advocate
Mr. Neeraj Gupta, Advocate
Mr. J. S. Mehndiratta, Advocate
Mr. Kshitij Shjarma, Advocate
Mr. Neeraj Gupta, Advocate
for the petitioner(s).

Ms. Tanu Shree Gupta, DAG, Haryana.

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A. B. CHAUDHARI, J. (ORAL)

Rule heard forthwith with the consent of learned counsel for the rival parties.

This court had made an order dated 28.06.2016 after perusal of the judgment and reasons recorded by the lower appellate court and after hearing learned counsel for the rival parties.

State has been represented by Ms. Tanu Shree Gupta, DAG, Haryana.

By the impugned judgment made by the appellate Court, the lower appellate Court reversed the order of acquittal made by the Magistrate. There can be no dispute that the lower appellate Court do have the power to reverse the order of acquittal but then the Apex Court has repeatedly laid down parameters for interference in relation to the appeals against the acquittal. From the reading of the judgment in

question, it does not appear that learned lower Appellate Court has at all adverted to the series of judgments in the matter of appeal against acquittal. The reason appears to be that amendment to Section 372 Cr.P.C. has recently come giving appellate power to the Sessions Court.

Perusal of the judgment and reasons recorded by the lower Appellate Court, particularly in para 13 thereof, clearly shows that before converting the order of acquittal into the one of conviction the lower appellate court has simply said that:

“However there is cogent and consistent evidence against all members of society for the commission of offences punishable u/ss 406 read with Section 120-B IPC beyond shadow of reasonable doubt”.

To the dismay, it is seen that though the aforesaid reasoning has been given but there is no discussion at all in the entire judgment with reference to any evidence, oral or documentary recorded during trial. In a case regarding defalcation in a society where the offences are tried under Sections 420, 406, 467, 468, 471 and 120-B, voluminous documents as well as oral evidence is always lead. Counsels for the petitioners submit that such evidence was indeed led before the Trial Judge.

Therefore, by only giving a reason that there is cogent and consistent evidence, the parameters laid down by the Apex Court have not at all been satisfied. I am, therefore, of the firm opinion that the impugned judgment and order, overturning the judgment of the acquittal of the Trial Court by recording the judgment of conviction must be held

to be illegal and will have to be set aside. The only way now is to make remand of the appeal/proceedings before the lower Appellate Court.

In that view of the matter, the following order is passed:

ORDER

- (i) CRR No.2323-2016, CRR No.2329-2016, CRR No.2314-2016, CRR No.2423-2016, CRR No.2347-2016 and CRR No.2378-2016 are partly allowed.
- (ii) The impugned judgment and order dated 04.06.2016 passed in CRR No.2323-2016, CRR No.2329-2016, CRR No.2314-2016, CRR No.2423-2016, CRR No.2347-2016 and CRR No.2378-2016 are set aside and proceedings of aforesaid appeals are remanded to the lower Appellate Court for fresh hearing and disposal, in accordance with law.
- (iii) No order as to costs.

28th SEPTEMBER, 2016
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No