

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

-:-

Date of decision: 09.10.2017

Crl. Appeal – S – 1325 – SBA of 2005 (O&M)

State of Punjab ...Appellant

Vs.

Harbhajan Singh ...Respondent

Crl. Rev. No. 1664 of 2005

Jaswinder Kaur ...Appellant

Vs.

Harbhajan Singh ...Respondent

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

Present: Mr. Dhruv Dayal, Sr. DAG, Punjab.

Ms. Harpreet Kaur, Advocate for
Mr. Navkiran Singh, Advocate, for the respondent.

A.B.CHAUDHARI, J. (Oral).

Heard.

State of Punjab being aggrieved by the judgment dated 10.11.2004 passed by Chief Judicial Magistrate, Patiala, by which the Court recorded the order of acquittal qua charges under Section 420/506 IPC in FIR No. 586 dated 21.07.2000, had filed the present appeal in this Court.

Learned counsel for the State-appellant vehemently argued that the trial Court itself had recorded a categorical finding that the facts were proved by the prosecution and not only that basic facts were also corroborated

vide para 10 the impugned judgment. It is, therefore, submitted that in the wake of the same the trial Court could not have recorded the order of acquittal.

Per contra learned counsel for the respondent opposed the appeal and supported the order of acquittal by referring to the reasons of trial Court while recording the order of acquittal. He submitted that there was delay of almost of one and a half year in lodging the FIR in matter of alleged amount of Rs.70,000/- paid to the respondents. He further stated that the prosecution has failed to prove its case. Therefore, trial Court rightly acquitted the accused-respondent. He, therefore, prayed for dismissal of the appeal.

I have heard learned counsel for the rival parties and gone through the findings so recorded before the trial Court.

In the case of **Darshan Singh Vs. State of Punjab, (2010) 2 SCC, 333**, the following parameters have been laid down by the Apex Court in para No.61:-

“61. In a case of acquittal, if the trial Court's view is a possible or plausible view, then the appellate Court or the High Court would not be justified in interfering with it. It is the settled legal position that there is presumption of innocence and that presumption is further fortified with the acquittal of the accused by the trial Court. The appellate Court or the High Court would not be justified in reversing the judgment of acquittal unless it comes to a clear conclusion that the judgment of the trial Court is utterly perverse and, on the basis of the evidence on record, no other view is plausible or possible than the one taken by the appellate Court or the High Court”

In the light of the above para-meters and independently looking at

the evidence in the first instance that the amount of Rs. 70,000/- is stated to have been given on 12.12.1998. The report was made by way of application for the first time on of 20.07.2000 and, thereafter, on the next day i.e. on 21.07.2000, the FIR was registered. The prosecution, therefore, did not discharge the initial burden of proof for explanation of the delay from 12.12.1998 till 20.07.2000. The delay could have been explained only by the complainant but then she did not explain the delay in lodging the complaint in the police station.

Learned counsel for the State submits that it can easily be presumed that no one would lodge a complaint in the Police Station with the expectation of getting the employment. That may be correct argument but there should be the evidence which is to be given by the concerned witness. The Court would not be justified in drawing inference as stated by the learned State counsel without evidence as complainant ought to have stated so in evidence. In that view of the matter, the submission made by the learned State counsel cannot be accepted. The learned trial Court has thereafter found that there was a major discrepancy in the evidence of the prosecution which was described in paragraph 18 of the impugned judgment, which I quote here-under:-

“18. The case was registered on the basis of application Ex. PB. In this application date of payment is not mentioned. Name of Gurmail Singh and Joginder Singh is not mentioned. It is mentioned that complainant arranged this amount from his relations with a great difficulty. But now complainant has examined Joginder Singh who has deposed that he paid Rs.58,000/- to Baldev Singh on account of his crop. In case the amount was received from Joginder Singh, then there was no

difficulty for the complainant to mention this fact in the complaint.”

I am also inclined to say the said discrepancy was of material importance and could not be said to be a minor discrepancy. Apart from that a trial Court has also found that there was a dispute between the parties regarding the joint business vide paragraph 16. I quote the paragraph 16, which reads as under:-

“16. Complainant when appearing in witness box as PW1 has stated that the amount was paid on 12.12.1998 and accused came to her house on 12.12.1998 and claimed that he can arrange service for her son. She has also deposed that her husband Baldev Singh has brought Rs.58,000/- in cash from their Commission Agent and some amount was already lying in their house. This fact belies the averments of the complainant that the amount was arranged with great difficulty from the relations. It is also submitted by learned Defence counsel that PW2 Baldev Singh is husband of the complainant. PW3 Gurmail Singh is claimed other witness, but his testimony is also not acceptable. DW2 Sudarshan Kumar has proved that a complaint filed by Gurmail Singh is pending against accused Harbhajan Singh under Section 138 of Negotiable Instrument Act and this case is stated to be No. 488T dated 31.08.2002 where as the statement of Gurmail Singh was recorded on 23.04.2001. Therefore, he has to settle his own score. PW4 Joginder Singh has claimed Commission Agent of Baldev Singh husband of the complainant. He has also stated that Avtar Singh is his partner and he is

related to Baldev Singh husband of the complainant. Therefore, this witness has also reason to support the complainant. Moreover, name of Gurmail Singh and Joginder Singh were not mentioned in the complaint. It was nowhere mentioned that the amount was arranged from Joginder Singh. In such circumstances, the case of the prosecution cannot be accepted.”

Taking overall view of the matter, the trial Court found that there was likelihood of the private dispute being reported to the police. Hence the trial Court decided to extend the benefit of doubt to the respondent-accused. The view taken by the trial Court is clearly probable and possible and cannot be said to be perverse.

In that view of the matter, it is not possible for this Court to interfere in the order of acquittal and in the result, I make a following order:-

O R D E R

Crl. Appeal – S – 1325-SBA of 2005 as well as Crl. Rev. No. 1664 of 2005 are dismissed.

October 09, 2017
tripti

(A.B.CHAUDHARI)
JUDGE

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