

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

CRR No.4654 of 2015.
Decided on:-07.09.2017.

Harkewal Kaur.

.....Petitioner.

Versus

State of Punjab and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Jasdev Singh Mehndiratta, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner-complainant has filed the present revision petition against the judgment dated 24.09.2015 passed by learned Additional Sessions Judge, Ferozepur whereby her appeal against the judgment dated 11.06.2014 passed by learned Judicial Magistrate 1st Class, Zira acquitting the accused, was dismissed.

Briefly stated, FIR No.74 dated 03.06.2010 under Sections 420 and 120-B IPC was registered against the respondent No.2 Ved Parkash and co-accused Rajpal Singh at Police Station Makhu, District Ferozepur on the basis of an application moved by complainant Harkewal Kaur (petitioner herein). It was alleged in the said complaint that respondent No.2 being proprietor of M/s Luxmi Traders, Commission Agents along with co-accused Rajpal Singh has misappropriated the sale proceeds of the complainant for the crop seasons of 2006 to Kharif 2008 regarding land measuring 12 acres 3 Kanals and 18 Marlas to the tune of Rs.7,30,824/-. It was alleged in the complaint that though the 'J' forms were issued qua the sale proceeds of the

crop in the name of complainant, but the said sale proceeds were kept by the commission agent as 'Amanat' and to repay later on along with interest @ 2% per month. Initially, the repayment of the amount was delayed by the accused on one pretext or the other, but finally, the accused refused to repay the amount. The complainant came to know that the entire amount was received by accused Rajpal Singh on behalf of the complainant.

After completion of investigation, report under Section 173 Cr.P.C. was filed in the Court. The copies of report along with other documents were supplied to the accused, as envisaged under Section 207 Cr.P.C. On finding a prima facie case against the accused, they were charge-sheeted under Sections 420 and 120-B IPC, to which they did not plead guilty and claimed trial.

After recording the evidence and hearing the parties, learned trial Court vide judgment dated 11.06.2014 convicted accused Rajpal Singh for commission of offence under Section 420 IPC, but acquitted accused Ved Parkash (respondent No.2 herein) of the charge framed against him.

Aggrieved against the aforesaid judgment dated 11.06.2014 passed by learned trial Court, the petitioner filed an appeal before the Court of Session challenging the acquittal of respondent No.2. However, the said appeal was dismissed by learned Additional Sessions Judge, Ferozepur vide judgment dated 24.09.2015.

It is in the aforesaid circumstances, the petitioner-complainant has filed the present revision petition challenging the verdict of the Courts below.

Learned counsel for the petitioner-complainant has argued that the prosecution has proved the case not only beyond reasonable doubt, but to the hilt. However, the Courts below did not appreciate the evidence adduced by the prosecution in a proper manner. He has contended that the forms 'J' were in the name of the petitioner and the sale proceeds of the crops were credited in the account of the petitioner, which was maintained by the respondent No.2. Thus, the respondent No.2 knew that the crops belonged to the petitioner and the sale proceeds were payable to her.

He has further contended that Naranjan Singh (PW6), who is husband and general power of attorney of the petitioner-complainant, has deposed that he had sent the crops in question for sale on commission basis at the shop of respondent No.2. However, respondent No.2 asked to retain the money for some time as he needed the same for personal use and agreed to pay the same along with interest @ 2% per month.

He has further argued that the petitioner-complainant never authorized the respondent No.2 to pay the money to accused Rajpal Singh. Thus, when the crops belonged to the petitioner, the payment of sale proceeds thereof to accused Rajpal Singh itself proves that there was a criminal conspiracy between the respondent No.2 and accused Rajpal Singh to cheat the petitioner. However, learned Courts below have not taken into consideration the aforesaid evidence. He has prayed that the impugned judgments of acquittal qua respondent No.2 be set aside and respondent No.2 be convicted and sentenced for the offence committed by him.

I have heard learned counsel for the petitioner-complainant.

Perusal of the paper book shows that learned trial Court after considering the entire evidence has acquitted the respondent No.2 Ved Parkash while observing that in the absence of any specific proof of conspiracy between accused Rajpal Singh and Ved Parkash, it cannot be presumed that Luxmi Trading Company has anything to do with the amount in question. Though accused Rajpal Singh used to take money as price of crop from M/s Luxmi Trading Company, but he never paid the money to the complainant Harkewal Kaur, which he was duty bound to pay.

The trial Court further observed that it was accused Rajpal Singh, who cheated two persons, namely, petitioner Harkewal Kaur and respondent No.2 Ved Parkash, who is proprietor of M/s Luxmi Trading Company. The payment of any amount does not establish cheating. The prosecution should have proved dishonest intention on part of Ved Parkash, but no criminal conspiracy is proved on record nor any evidence has come on record. Thus, the trial Court had convicted accused Rajpal Singh for offence under Section 420 IPC, and acquitted respondent No.2 Ved Parkash of the charge framed against him.

Similarly, the appeal filed by the petitioner-complainant against acquittal of respondent No.2 has been dismissed by learned Additional Sessions Judge, Ferozepur while observing that no criminal liability for the charged offence could be fastened against respondent Ved Parkash when he has already made the payment to accused Rajpal Singh, who had sold that produce crop at his shop. Therefore, the trial Court has rightly acquitted the respondent.

There are concurrent findings given by the Courts below in favour of the respondent No.2. It would also be relevant to mention here that the scope of revisional jurisdiction is vested with limited powers. Hon'ble Supreme Court in ***Johar and others Versus M/s Mangal Prasad and another, 2008(3) SCC 423*** while dealing with the scope of revisional jurisdiction, has observed as under:

“17. The approach of the High Court to the entire case cannot be appreciated. The High Court should have kept in mind that while exercising its revisional jurisdiction under section 397 and 401 of the Code of Criminal Procedure, it exercises a limited power. Its jurisdiction to entertain a revision application, although is not barred, but severally restricted, particularly when it arises from a judgment of acquittal.”

In ***Venkatesan Versus Rani and another 2013(4) RCR (Criminal) 919***, the Apex Court has held that while examining an order of acquittal, the revisional jurisdiction of the High Courts is extremely narrow and the same should be exercised only in case where the trial Court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence. The language of Section 401 Cr.P.C. makes it amply clear that there is no power vested in the High Court to convert a finding of acquittal into one of conviction. The relevant paragraph No.7 of the said judgment reads as under:

“7. The above consideration would go to show that the revisional jurisdiction of the High Courts while examining an order of acquittal is extremely narrow and ought to be exercised only in cases where the Trial Court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence thereby causing miscarriage of

justice. Re-appreciation of evidence is an exercise that the High Court must refrain from while examining an order of acquittal in the exercise of its revisional jurisdiction under the Code. Needless to say, if within the limited parameters, interference of the High Court is justified the only course of action that can be adopted is to order a re-trial after setting aside the acquittal. As the language of Section 401 of the Code makes it amply clear there is no power vested in the High Court to convert a finding of acquittal into one of conviction.”

It is settled law that the prosecution is required to prove its case beyond all probabilities. The accused is considered to be innocent unless proved guilty by the prosecution by leading cogent evidence. However, in the present case, the petitioner has not been able to prove her case against the respondent beyond shadow of reasonable doubt. The petitioner-complainant has also not been able to prove that in what manner, impugned judgments passed by the Courts below suffer from illegality, irregularity or perversity which may warrant interference of this Court by invoking its revisional jurisdiction.

Accordingly, the judgment of acquittal qua respondent No.2 Ved Parkash passed by learned trial Court on 11.06.2014 as well as judgment dated 24.09.2015 passed by learned Additional Sessions Judge, Ferozepur are affirmed and the present revision petition, being devoid of any merit, is dismissed.

(HARI PAL VERMA)
JUDGE

September 07, 2017

Yag Dutt

Whether speaking/reasoned: Yes

Whether Reportable: No