

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 1837 of 2011 (O&M)

Date of decision : 30.1.2018

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Malhotra Book Depot

.....Petitioner

vs.

Abdul Mazid and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Aayush Gupta, Advocate for the petitioner

Mr. A.S. Gill, Advocate for respondent No.1.

Mr. Saurav Khurana, Deputy Advocate General,
Punjab.

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H. S. Madaan, J.

Accused – Abdul Mazid faced trial by Judicial Magistrate Ist Class, Jalandhar, in a case registered vide FIR No. 157 dated 30.8.1999 for offences under Sections 420, 406 IPC, registered at Police Station Division No.3, Jalandhar and vide judgment dated 21.4.2008, he was acquitted of the charge framed against him, whereas accused Gulam Hassan, who had been declared as proclaimed offender, regarding him it was directed that he be arrested

and produced before the Court.

Briefly stated, facts of the case as per prosecution story are that the FIR in question was registered on the basis of statement of complainant Madan Lal Sharma, recorded before SI Harjinder Singh to the effect that he was working as Legal Advisor with MBD group situated at Old Railway Road, Jalandhar. Such group printed books of 6th class and upward classes for selling the same at wholesale market price; that they had come to know that accused Abdul Mazid and Gulam Hassan published the duplicate MBD books from Deepawali Printing Press, Preet Nagar, Soda Road, Jalandhar, as well as printing press of Naresh Kohli, thereafter got the books bind from Jaswant Binder, Kishanpura Mohalla and Naresh Kumar s/o Surinder Lal, thereafter selling the same in Jammu and Kashmir at less prices, causing loss of MBD Group to the tune of lacs of rupees; that both Abdul Mazid and Gulam Hassan cheated the MBD Group by using the sticker of MBD Group. After registration of FIR the case was investigated. Abdul Mazid was arrested, whereas it was no so as regard accused Gulam Hassan, who was declared as a proclaimed offender. Formal FIR was registered. Statements of witnesses were recorded.

After completion of investigation and other formalities, challan against both the accused was filed in the Court.

On presentation of challan, copies of documents relied upon therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C. and then finding that prima facie case, charge under Sections 468, 120-B IPC and 51(b) I, II and III, as well as

Section 63 of Copy Right Act, was framed against the accused, to which he pleaded not guilty and claimed trial and the case was fixed for evidence of the prosecution.

During the course of evidence of prosecution, the prosecution examined PW-1 Sham Sunder, PW-2 Om Parkash and PW-3 Kamal Sharma. Thereafter, since the prosecution failed to conclude its evidence, despite affording several opportunities, the evidence was closed by the Court by order.

Statement of accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against the accused were put to him but to which he pleaded false implication and innocence. The accused did not lead any evidence in defence.

After hearing the arguments, the trial Court had formulated the following points for determination.

- (i) Whether accused Abdul Mazid got printed the books of MBD Company with intend to cause damage or injury to MBD company?
- (ii) Whether the accused is connected with the offence of cheating?
- (iii) Whether any duplicate books were recovered from the accused or not?

After hearing the arguments, the trial Court acquitted the accused of the charge framed against him making the following observations:-

“In the instant case, the prosecution story is that

accused Abdul Mazid published the books of different classes with the trade mark of MBD and due to this act he caused loss to MBD Group and the duplicate books and negatives of books were recovered from the accused. But surprisingly the recovered books and negatives were not produced in the Court. Moreso, it is further case of the prosecution that accused Abdul Mazid got recovered these negatives on the basis of confessional statement. But the alleged witness of confessional statement PW-3 Kamal Sharma deposed in the cross examination that the accused made confession statement after the recovery. Thus, this part of cross examination of this witness fatal to the case of prosecution because the recovery of negative is not proved as per law from the accused Abdul Mazid which was made on the basis of confessional statement. Furthermore, the prosecution has failed to prove that the accused was indulging in printing of duplicate books. The alleged printing press was not belonged to the accused. Moreso, the prosecution has failed to explain why the owner of printing press were made accused or not. PW-5 specifically deposed that he never seen the accused indulging in the sale of duplicate books

nor he ever seen the accused preparing duplicate books published by their firm and he does not know from whom the police had made the recovery of duplicate books. So, in these circumstances, when the case property i.e. Books and negatives have not been produced in the court and more so original books with trade mark are not produced in the court. No comparison from any independent agency was got done by prosecution. There is no direct evidence against the accused, so the accused cannot be connected with the offence of cheating. So, in my view the prosecution has not been able to prove its case by leading cogent and reliable evidence. Thus, the points of determination are decided against the prosecution and in favour of accused.”

Then coming to the conclusion that prosecution has not been able to prove guilt against accused Abdul Mazid, he was acquitted of the charge framed against him as detailed above.

The said judgment of acquittal was challenged by way of filing an appeal by the complainant. However, the said appeal was dismissed by the Additional Sessions Judge, Fast Track Court, Jalandhar, vide judgment dated 31.8.2010, as such the criminal revision petition before this Court has been filed, notice of which was given to the State and complainant.

I have heard learned counsel for the petitioner, learned State

counsel, learned counsel for the complainant, besides going through the record and I do not find any merit in this petition. The judgment passed by the trial Magistrate is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. Therefore, I do not find any illegality or infirmity with the order under revision which might have called for interference by this Court, while exercising revisional jurisdiction. It is well settled that revisional jurisdiction of this Court is quite limited and the Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment under challenge. This is not the case here.

The criminal revision petition is found to be without any merit and is dismissed accordingly.

(H.S. Madaan)
Judge

30.1.2018 chugh	Whether speaking / reasoned	Yes / No
	Whether reportable	Yes / No