IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2980-2013
Date of decision:-8.2.2018

Inder Gupta

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Vikram Singh, Advocate
for the petitioner.

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H.S. MADAAN, J.

Accused Anil Kumar Gupta, an accused in FIR No.91 dated 8.6.2008 for the offences under Sections 419/426/465/467/468/471 IPC, registered with Police Station Dinanagar was tried by Judicial Magistrate Ist Class, Gurdaspur, who vide judgment dated 22.8.2012 convicted him for offences under Sections 419 and 467 IPC and vide order of that very date was sentenced as under:

Under Section	**Sentence Awarded**
419 IPC	Rigorous imprisonment for two years and to pay a fine of Rs.2,000/- and in default thereof, to further undergo imprisonment for a period of one month.

467 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.3,000/- and in default thereof, to further undergo imprisonment for a period of one month.

However, the accused was acquitted for the offences under Sections 465, 468 and 471 IPC.

Briefly stated, the facts of the case as per prosecution story are that complainant Inder Gupta has business at Damtal (HP) and Delhi; that he is younger brother of accused Anil Kumar Gupta; that their mother had died in the year 2005; that she had an LIC policy in her name in the sum of Rs.2,64,675/-, in which the complainant as well as Avishek Gupta and Aditya Gupta sons of accused were nominees in equal share; that the cheques regarding the policy were issued by LIC Office to all the nominees; that a cheque bearing No.196346 dated 27.3.2006 in the sum of Rs.88,225/- pertaining to share of complainant was taken by Anil Kumar accused from LIC office by preparing forged documents and opening account with Punjab Gramin Bank, Dinanagar; that he had signed account opening form, specimen signatures slip as Inder Gupta, though the accused had put his own photographs on the form No.60.

On statement of the complainant, formal FIR was registered. The matter was investigated and accused was arrested in this case.

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

On presentation of challan in the Court of Judicial Magistrate Ist Class, Gurdaspur, copies of documents relied upon in the challan were supplied to the accused free of costs as provided under Section 207

Cr.P.C.

Learned Judicial Magistrate Ist Class, Gurdaspur finding that charge for the offences under Sections 419, 420, 465, 467, 468, 471 IPC was disclosed against the accused, charge-sheeted the accused for the said offence, to which, he pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

To bring home guilt to the accused, the prosecution examined as many as seven witnesses, namely, PW1 Inder Gupta, PW2 Ajay Pal Singh Bhuller, PW3 Inderjit Sharma, PW4 Kasturi Bhagat, PW5 Inspector Deep Singh, PW6 Om Parkash and PW7 Vijay Singh, Guard.

Since the prosecution failed to conclude its evidence despite availing ample opportunities, the same was closed by Court order.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case.

Accused did not lead any evidence in his defence.

After hearing arguments, learned Judicial Magistrate Ist Class, Gurdaspur convicted and sentenced the accused as mentioned supra.

Feeling aggrieved, the accused preferred an appeal against the judgment of conviction and order of sentence passed by the Judicial Magistrate Ist Class, Gurdaspur before the Court of learned Sessions Judge, Gurdaspur, who vide judgment dated 30.11.2012 accepted the same and set aside the judgment of conviction and order of sentence passed by the trial Court and acquitted the accused of the charge framed against him.

Feeling aggrieved, the complainant has filed the revision petition in this Court.

I have heard learned counsel for the petitioner besides going through the record.

The present revision petition has been filed belatedly. An application under Section 5 of the Limitation Act has been filed for condonation of delay of 175 days in filing the revision petition contending therein that after passing of the impugned order, the petitioner inquired from his counsel in the lower Court regarding further action which was required to be taken and the counsel informed him that a petition under Section 482 Cr.P.C. was to be filed for setting aside the impugned order and there was no limitation for doing it. Thereafter, he contacted the Advocate in the High Court on 24.4.2013 and only then he came to know that revision was maintainable having limitation of 90 days, which had become time barred, therefore, the delay was not intentional and wilful.

I find that the reasoning given there is not plausible and convincing. Undoubtedly ignorance of law is no excuse.

Section 3 of the Limitation Act, 1963 deals with Bar of Limitation providing that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

Section 5 of that very act provides that any appeal or any application may be admitted after the prescribed period if the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. In this case the petitioner has failed to show any sufficient cause. Therefore, application under Section 5 stands dismissed. The revision petition is clearly time barred and deserved to be dismissed on that score alone.

However, on merits also, the petitioner does not have a case. Learned Sessions Judge, Gurdaspur in the impugned order has given valid reasoning for coming to the conclusion that no offence is proved to have been committed by the accused. Firstly, while referring to para No.19 of the judgment passed by the trial Court, where the trial Court has observed that no offence under Sections 465, 468, 471 IPC is made out against the accused thereby acquitting him for the said offences, meaning thereby, that the trial Court came to the conclusion that accused had not committed offence of forgery, learned Sessions Judge, Gurdaspur has observed that in view of such finding given by the trial Court, it cannot be said that the accused forged a document, which purports to be a valuable security, as such, the trial Court was not justified in convicting the accused for offence of forging a document purporting to be a valuable security, therefore, conviction of accused for offence under Section 467 IPC was not sustainable.

Then referring to the allegation that accused had impersonated himself as Inder Gupta, learned Sessions Judge, Gurdaspur has observed that Inder Gupta was not present at the time of commission of the alleged offence, therefore, his statement does not advance the case of the prosecution in any way and it was only Ajay Pal Singh PW2, who was posted as Branch Manager and had opened the account, who stated that it was accused who signed the papers in his presence, though during cross-examination he stated that he opened the account without documents adding that Vijay Singh, Guard had introduced Inder Gupta, who had signed in his presence, in that way Ajay Pal Singh had opened the account without verification of the proper documents as well as at the introduction of Vijay Singh, Guard of the bank. But Vijay Kumar PW7 had stated that the person, who came to bank for opening the account was not present in the Court when statement of that witness was recorded there, as such exonerating the accused being the person who had gone to the bank and opened the account. Learned Sessions Judge, Gurdaspur has observed that if some photograph of accused is found on the account opening form Ex.PW2/A, the same does not mean that it was accused, who opened the account. The concluding para No.18 of the judgment passed by learned Sessions Judge, Gurdaspur is very relevant and for ready reference the same is reproduced as under:

> *There are signatures of Inder Gupta at several places, including account opening form, specimen signature sheet, but no effort has been made to examine handwriting expert to establish beyond doubt that said documents actually bear the signatures of accused and not of the complainant Inder Gupta, and on the basis of bare statement of Ajay Pal Singh PW, it cannot be said that it was accused, who signed the documents as Inder Gupta or he impersonated himself before the concerned authorities as Inder Gupta. Thus, in view of*

the statement of Vijay Singh PW-7, as well as of the non-examination of handwriting expert, it becomes doubtful that it was the accused who opened the account in the bank in the name of complainant, namely, Inder Gupta and, therefore, finding recorded by the learned Lower Court that offence under Section 419 IPC is proved on the file is also not sustainable and is liable to be set aside.

I do not find any illegality and irregularity in the judgment passed by the learned Sessions Judge, Gurdaspur sitting as Appellate Court. Rather it is based upon proper appraisal and appreciation of evidence and correct interpretation of law. It can certainly be not termed as perverse or having been passed against settled principles of criminal law. There is no error apparent on the face of it. The law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse, merely because another view in the matter is possible, no inference with such judgment is to be done.

Finding no merits in the petition, the same stands dismissed.

8.2.2018 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No