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

201

**CRM No.488-MA of 2007 (O&M) in/and
CRA-S-1743-SB-2008**

Date of decision : 03.12.2019

State of Punjab

... Appellant

Versus

Pawan Kumar Dhir and others

.. Respondents

CORAM :HON'BLE MR.JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. K.K. Bheniwala, Addl. A.G., Punjab.

Anupinder Singh Grewal, J. (Oral)

The State has preferred this application under Section 378(4) of the Criminal Procedure Code for grant of leave to appeal against the judgment dated 01.08.2006 passed by the Sub-Divisional Judicial Magistrate, Sultanpur Lodhi, whereby the respondents had been acquitted of the charges in FIR No.213 dated 17.10.2002, under Sections 451, 427, 380 and 34 IPC, registered at Police Station Sultanpur Lodhi.

The aforesaid FIR was registered on the complaint of Gurpreet Singh son of Jaimal Singh, who was special power of attorney-holder of legal heirs of one-Amar Nath Dhir. In his complaint, it was stated that on 16.04.2000, the accused (respondents herein) had forcibly entered the house after breaking open the lock without the consent of the owners. They had also taken away wooden logs, bricks and other articles. After presentation of the challan by the police, charges were framed against the accused under Sections 451, 380 and 427 IPC.

In order to prove its case, the prosecution has examined five witnesses including Gurpreet Singh (complainant) as PW-1, Mohinder Singh as PW-2, DSP Harpreet Singh as PW-3, ASI Sarabjit Singh as PW-4 and Jograj Dhir as PW-5 .

After closure of the prosecution evidence, accused-respondents were examined under Section 313 Cr.P.C and pleaded innocence. In their defence, the accused had also examined several witnesses.

The trial Court after considering the evidence on record had acquitted the respondents on the ground that the prosecution had failed to prove its case.

Learned State counsel contends that the order of acquittal was unwarranted from the evidence on record as the prosecution was able to prove its case beyond reasonable doubt.

Heard.

The FIR had been registered in the year 2002. Although the incident is alleged to have taken place on 16.04.2000, the delay is sought to be justified on the ground that the complainant had made an application on 16.04.2000, however, the police did not act upon the same till 2002. It is manifest from the perusal of the record that the complainant, in his application purportedly made on 16.04.2000, had not set out the details of the articles stolen and the commission of the offence. There are several material discrepancies in the evidence of the prosecution witnesses. PW-5 had admitted in his cross-examination that the complainant had told him about the incident in the year 2000 but he did not approach the police as he felt that they would not take any action in the matter. The trial Court has also noticed that the

accused and the complainant were the co-owners of the property in question and the FIR had been registered on account of civil dispute between them. It could not be established as to whether the complainant was in exclusive possession of the property. PW-5 had also stated in his cross-examination that oral settlement had taken place but there was no writing with regard to the complainant being in possession of the property.

It is well settled that interference in an order of acquittal would be called for only where there is manifest illegality and perversity which has caused miscarriage of justice. Even if on reappreciating the evidence, another view is possible on the same facts, the appellate Court would not interfere with the finding of acquittal as the presumption of innocence of an accused is reinforced by an order of acquittal. Reference can be made to the judgment of Hon'ble Supreme Court of India in the case of **Prem Singh v. State of Haryana, (2013) 14 SCC 88** wherein it was held:-

“7. In a recent decision in Murugesan v. State this Court had the occasion to consider the broad principles of law governing the power of the High Court under Section 378 of the Code of Criminal Procedure, 1973. The summary of the relevant principles of law set out in para 21 of the judgment may be extracted hereunder:

“21. A concise statement of the law on the issue that had emerged after over half a century of evolution since Sheo Swarup is to be found in para 42 of the Report in Chandrappa v. State of Karnataka. The same may, therefore, be usefully noticed below:

‘42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an

appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, ‘substantial and compelling reasons’, ‘good and sufficient grounds’, ‘very strong circumstances’, ‘distorted conclusions’, ‘glaring mistakes’, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of ‘flourishes of language’ to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

“13. The parameters within which the High Court was required to exercise its powers under Section 378 of the Code while hearing the State’s appeal have already been noticed. If a conclusion with regard to the innocence of the accused is reasonably possible on the basis of the evidence and materials on record the High Court ought not to have disturbed the findings recorded by the trial Court, even if, on a re-appreciation of the evidence, it was inclined to take a different view. So long the view taken by the trial Court was a possible view the exercise of the appellate power of the High Court under Section 378 CrPC would remain circumscribed by the well- settled parameters.”

In view of the above, *prima facie* case is not made out for conviction of the accused/respondents and the application under Section 378(4) Cr.P.C. being devoid of any merit stands dismissed. Leave to appeal is declined.

(ANUPINDER SINGH GREWAL)
JUDGE

December 03, 2019
sonia gugnani

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