

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-2142-MA of 2016
Date of Decision: 16.12.2019

Jai Pal

.....Applicant

Vs.

Om Parkash

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: - Mr. K.P.S.Virk, Advocate for the applicant.

Ms. Anika Mehra, Advocate for the respondent.

HARNARESH SINGH GILL, J.

The applicant has filed the present application under Section 378(4) Cr.P.C. for grant of special leave to appeal against the judgment dated 30.9.2016 passed by learned Chief Judicial Magistrate, Kurukshetra vide which the respondent was acquitted of the charges framed against him.

The complaint in question was filed by the complainant stating that he and accused Om Parkash were residents of same village. Accused Om Parkash was born on 18.5.1959 at village Ishargarh and his birth entry had been duly registered with the Health Department vide registration No. 6 dated 30.5.1959. It has been alleged that as per the birth certificate, age of the accused was about 48 years and 11 months in the year 2008 but in the voter list, his age was mentioned as 49 years and 08 months. It has further been alleged that the accused had applied for the old age pension by giving his age as 63 years. The accused had committed forgery by giving his age as 63 years in order to get the old age pension. The accused had filled the application form for the old age pension and sent the same to the office of District Social Welfare, Kurukshetra and started getting the old age pension from the month

of April 2008. The accused had mentioned his father's name as Karta Ram, whereas the correct name is Kartara Ram and that there was no person by the name of Om Parkash son of Kartara Ram except the accused. Therefore, the accused had forged the documents by showing his age as 63 years and used the same for the wrongful gains and had caused loss to the State Exchequer. Regarding this, the complainant had filed a complaint before the Police and the Social Welfare Department but to no effect.

After recording of the preliminary evidence, accused was summoned to face the trial under Sections 420, 465, 468, 471 IPC.

In pre-charge evidence, the complainant examined Manju Bala Election Kanungo as CW-1 who proved the record of the voter list as Ex. C-1. He also examined CW-2 Promila, Urdu Translator. She produced the birth register Ex. C-2/Ex.C-6 bearing date of birth of accused at Sr. No. 6 at page No. 15. The complainant also examined Suresh Kumar, Assistant O/o the District Social Welfare, Kurukshetra as CW-3.

The complainant himself stepped into the witness box as CW-4 and stated that he had not suffered any loss by receipt of the pension by the accused and the loss had been caused to the Govt. He further stated that the recovery of due amount to the tune of Rs. 19,500/- had been effected by the Social Welfare Department from the accused.

As per the report of police under Section 202 Cr.P.C. dated 17.5.2013, the amount of the old age pension received by the accused had been deposited by him on 4.6.2011 after receiving notice from the Social Welfare Department.

Charges were framed against the accused under Sections 420, 465, 468, 471 IPC to which he pleaded not guilty and claimed trial.

The accused further cross examined CW-1 Manju Bala, CW-3

Suresh Kumar and CW-4 complainant Jai Pal.

CW-3 Suresh Kumar in his cross-examination stated that no FIR had been got registered by the Department and 2-4 similar cases had been compounded in a year. He admitted that the Medical Officer had verified the age of the applicant as mentioned in the application form and age verification was done at the time of filling in the application form and admitted that the age was mentioned as 63 years in column No. 3 after verification by the Doctor.

Complainant CW-4 Jai Pal also admitted in his cross-examination that the entire amount received by the accused, had been deposited by him with the Department concerned.

In the statement recorded under Section 313 Cr.P.C., the accused denied the allegations and pleaded innocence.

As per the finding of the Court below, admittedly no wrongful loss had been caused by the accused to the complainant and upon receiving the complaint, the matter was enquired into and ultimately the Department concerned had effected the recovery of the entire amount of the old age pension from the accused. Even in the report under Section 202 Cr.P.C., it was not reported that the accused was a defaulter. In the present case, no loss had been caused by the accused to the complainant and the matter was compounded between the accused and the Department concerned.

I find that the testimony of the witnesses of the complainant did not advance the case of the complainant in any manner to prove the guilt on the part of the accused-respondent. The complainant had failed to prove the alleged forgery and preparation of false documents. No documentary proof in respect of alleged forged documents was led before the trial Court. All

these facts led the learned trial Court to record the finding of acquittal.

The Hon'ble Apex Court in ***Ghurey Lal versus State of U.P. (2008) 10 SCC 450***, has held that the Appellate Court though undoubtedly has wide powers of re-appreciating and re-evaluating the entire evidence, yet it would be justified in interfering with the judgment of acquittal only when the judgment of the trial Court is palpably wrong, totally ill-founded or wholly misconceived, based on erroneous analysis of evidence and non-existent material, demonstrably unsustainable or perverse.

Recently, in ***Criminal Appeal Nos. 3-4 of 2015 – Union of India versus Dafadar Kartar Singh*** decided on December 09, 2019, the Apex Court has held that the judgments of acquittal may be reversed or otherwise disturbed only for very substantial and compelling reasons.

The Department had already effected the recovery from the respondent and therefore, no FIR was lodged by it against the respondent. The report under Section 202 Cr.P.C was in favour of the respondent and the matter was compounded between the Department and the respondent. Even otherwise the present complaint was filed on 23.9.2011 and since then the respondent has been facing the agony of trial.

I do not find any patent illegality or infirmity in the impugned judgment of acquittal so as to warrant interference by this Court.

Consequently, the application seeking leave to appeal is dismissed. Leave to appeal is declined.

(HARNARESH SINGH GILL)
JUDGE

December 16, 2019

Gurpreet

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