

CRM-A-1915-MA-2017

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

CRM-A-1915-MA-2017 (O & M)
Date of Decision: 15.11.2019

Harish Puri

... Applicant

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Argued by: Mr. Ram Parkash Dhir, Advocate,
for the applicant.

HARNARESH SINGH GILL, J.

The present application under Section 378(4) of the Code of Criminal Procedure has been preferred against the judgment dated 07.01.2017 passed by learned Additional Sessions Judge, Hoshiarpur, vide which respondents No.2 and 3 were acquitted of the charges framed against them by setting aside the judgment of conviction and order of sentence dated 12.10.2016 passed by the learned Judicial Magistrate Ist Class, Hoshiarpur, in case FIR No.240 dated 06.07.2008 under Sections 380/457 of the IPC, registered at Police Station Model Town, Hoshiarpur.

Brief facts of the case are that on 27.02.2008, applicant-complainant, Harish Puri moved a written complaint to Sr. Superintendent of Police against Tarlochan Singh and Gurmail Singh, Managers, Azad Transport Company, District Hoshiarpur, in respect of taking illegal possession of the shop in question and committing theft of articles lying therein. It was averred that father

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of complainant namely Hari Mttar had taken the shop on rent in the year 1960. After his death, mother of complainant had started running Lunch Home as well as PCO in the said shop. Accused persons mentioned above were having good political connections and they had been threatening mother of complainant to get the shop vacated illegally and forcibly. Because of the threats given by accused persons, mother of complainant filed a civil suit in the court and Mrs. Vipan Deep Kaur, PCS, the then Ld. Civil Judge (Jr. Division) Hoshiarpur. The Court, on 14.02.2008, passed status quo order qua possession. On 23.02.2008, accused persons appeared in that suit through their counsel Shri K.C.Mahajan, Advocate and took an adjournment to file the written statement and reply to stay application. On 23.02.2008, complainant went to his home after closing the shop since his mother was ill. In the morning of 24.02.2008 at 9:30 a.m., when he came to the shop for opening the same, he found that lock of the shop was changed. Accused persons after breaking the lock of complainant had put their own lock on the said shop. Accused persons had again threatened complainant in the shop. There was one deep Freezer, one fridge make LG 200 lts. one colour T.V. 20" make Samsung, one dish make Tata Sky, two inverters, two counter Aluminium, two gas cylinders commercial of Man company, four gas cylinders (small) 50 plates steel small, 50 plate steel Full size, five Pateelas (brass pots), Mixer, 15 boxes of Pepsi, 20 boxes of Coke, 20 chairs (steel) 5 tables, 4 computers, 4 phone hand set connection, 2 Cabin Aluminium, 2 ceiling fans, two standing fans, 2 coolers, 2 exhaust Fans, 3 burners, (Chulhas), all amounting to Rs.4 lakh. It was,

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thus, averred that the complainant had a suspicion that all the articles mentioned above had been stolen by the accused persons. His mother was a tenant in the said shop and accused persons had forcibly taken possession of the shop. On the basis of the said complaint, FIR had been registered against accused persons for commission of offences punishable under Sections 380 and 457 of the IPC.

Investigation was carried out. Statements of witnesses under Section 161 of the Cr.P.C. were recorded. Stolen articles were recovered from the possession of the accused persons vide separate recovery memos. Site plan of the place of recovery was prepared. After completion of other necessary formalities of investigation, challan as per Section 173 of the Cr.P.C. against accused was presented in the Court.

I have heard learned counsel for the applicant-complainant and with his able assistance, have also gone through the judgments of the courts below.

The trial Court had carved out the following points of determination arising from the case:

- “1. Whether on the intervening night of 23.02.2008/24.02.2008, accused persons committed theft of articles lying in the shop which were under the possession and custody of complainant?*
- 2. Whether accused persons retained aforementioned articles mentioned in recovery memos dated 12.10.2008 belonging to complainants knowing it to be stolen articles?”*

The trial Court after taking into consideration the

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judgment and order dated 12.10.2016, convicted respondents No.2 and 3 under Sections 380 and 411 IPC and sentenced them to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/- and in default of payment of fine, to further undergo rigorous imprisonment for 15 days each under Section 380 IPC and Section 411 IPC. However, as noted above, the appeal filed by respondents No.2 and 3 was allowed by the learned Additional Sessions Judge on 07.01.2017 thereby setting aside the judgment and order passed by the trial Court.

Learned counsel for the applicant has contended that respondents No.2 and 3 had taken law in their own hands and broke open the lock of the disputed shop which was in the possession of the applicant-complainant as a tenant. While relying on the statement of PW 2 complainant-Harish Puri, learned counsel stated that when he had entered in the shop, he had been shocked to see that all the articles in the shop had been removed and later on, the articles had been recovered from the possession of respondents No.2 and 3, vide recovery memo dated 12.12.2008 Ex.PW 9/A, after a period of eight months. He further argued that the mother of applicant-complainant was running a tiffin centre and STD/PCO and respondents No.2 and 3 could not show their ownership regarding the recovered articles and simply dismissal of sapurdari application is not sufficient to acquit of the accused.

Learned counsel for the applicant also drew the attention of this Court towards para No.29 of the judgment of trial Court wherein the trial Court had concluded that it was not a case where the applicant-complainant was inimical towards respondents

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No.2 and 3 at any stage, but after the status quo order passed in favour of the applicant, it was possible that respondents No.2 and 3 had turned inimical towards the applicant. He further argued that even if PW 1 Dharam Pal had resiled from his statement that the police had never recorded his statement, but PW 2 complainant-Harish Puri stated that since 1960, they had been in possession of the said shop and had been running PCO since 1997 and an amount of Rs.2,000/- had been deposited with Pt. Sansar Chand in the year 1968, who was previous owner of Azad Transport Company and after the death of his father in the year 1999, his mother started running a Tea Stall in the said shop. The testimony of this witness remained unrebutted.

He further argued that Gurmit Singh, Sr. Clerk, BSNL Office, Hoshiarpur, while appearing as PW 5, proved on record that phone No.255974 had been installed in the name of Harish Puri son of Hari Mittar, at Puri Tea Stall and on 04.01.2001, the consumer had submitted request for transfer of the said telephone connection.

I do not agree with the contentions raised by the learned counsel for the applicant.

In the present case, PW 3 Tarsem Singh, PC Branch SSP Office, Hoshiarpur, had brought the record of the inquiry report conducted by DSP and as per the same, it was not possible to retain such huge articles in the shop and the case made out by the applicant-complainant was found to be false. Even PW 1 Dharam Pal stated that there had been no tea stall nor Hari Mittar or his wife had been running any tea stall near his shop. This witness is a

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shopkeeper nearby.

Moreover, PW 9 SI Surender Singh admitted that the alleged place belonged to Azad Transport Company and possession of the shop was with Tarlochan Singh and Gurmail Singh (respondents No.2 and 3). Neither there was any rent deed placed on record nor any rent deed was scribed nor ownership of the articles was shown and all the articles were lying in the police station which were not taken on sapurdari.

Thus, taking into consideration the evidence on record, the lower Appellate Court has rightly arrived at a conclusion that the prosecution had failed to prove its case beyond the shadow of reasonable doubt against respondents No.2 and 3.

It is well settled by now that if the view adopted by the Court while acquitting the accused is a reasonable one and the conclusion reached by it had its grounds well set out on the material on record, the acquittal may not be interfered with. A Division Bench of this Court in case State of Haryana v. Satbir, 2013(7) R.C.R. (Criminal) 1490, has held as under:-

“There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be

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interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience.”

Still further, Hon’ble Supreme Court in State of Rajasthan Vs. Shera Ram @ Vishnu Dutta, Criminal Appeal No. 1502 decided on 1.12.2011 has held that if the two views are possible on the evidence adduced in the case, then one favourable to the accused, may be adopted by the Court. It was held as under:-

“12. There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal, the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where inference is imperative and then ends of justice so require and it is essential to appease the judicial conscience.”

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It could not be pointed out that the judgment of acquittal passed by the lower Appellate Court is based on misreading or misinterpretation of evidence on record.

No other point has been raised during the course of the arguments.

From the above, I do not find any ground to grant leave to file appeal. Therefore, finding no merit in the present application seeking leave to file appeal, the same is dismissed. Leave to appeal is declined.

15.11.2019

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Note: Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No