

In the High Court of Punjab and Haryana at Chandigarh
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CRM-M-2933-2021

Date of Decision: 22.11.2022

Azad Singh

---Petitioner

versus

State of Haryana and Others

---Respondent

Coram: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Parveen Kumar, Advocate
for Mr. Abhimanyu Singh, Advocate
for the petitioner

Ms. Dimple Jain, AAG, Haryana

JAGMOHAN BANSAL,J. (ORAL)

1. Through the instant petition under Section 482 of the Code of Criminal Procedure, the petitioner is seeking setting aside of impugned order dated 15.9.2016 (Annexure P-1) passed by Judicial Magistrate Ist Class, Charkhi Dadri in Criminal Complaint No. 308 of 2013 dated 23.02.2013 and order dated 15.12.2021 (Annexure P-3) passed by Additional Sessions Judge, Charkhi Dadri.

2. The brief facts emerging from the record are that the petitioner filed a complaint under Sections 419, 420, 406, 407, 467, 468, 469, 471 and 120-B of IPC which came up for consideration before Sub Divisional Judicial Magistrate, Charkhi Dadri. The petitioner/complainant filed complaint against respondents on two counts namely (i) Sat Parkash has forged and issued receipt Mark A and Dariya Singh has signed the Will in the capacity of Numberdar whereas he was never designated as Numberdar. Other respondents were made party in the ground that they are beneficiary of aforesaid Will. The complainant to corroborate his case examined seven witnesses i.e. CW-1 to CW-7. Learned trial

court after scrutinizing the record and considering oral testimony of witnesses came to a conclusion that sufficient grounds are absent for summoning the accused. The court found that complainant has miserably failed to prove that Dariya Singh was never designated as Numberdar. The documents mark A and B are merely photocopies and complainant has failed to prove both these documents. The complainant has alleged that accused No. 1 and 2 deposed falsely in the proceedings of civil court and they forged receipts Mark A and B. The allegations of the complainant are that accused Nos. 1 and 2 have deposed falsely and fabricated the evidence in the civil proceedings but complainant opted to file complaint under Section 420, 468, 120-B IPC instead of filing complaint under Section 191, 193 of IPC.

3. The petitioner feeling aggrieved from judgment of trial court preferred revision petition before Sessions Court which came up for consideration before learned Additional Sessions Judge, Charkhi Dadri who vide impugned judgment dated 15.12.2021 dismissed petition of the present petitioner holding that order passed by trial court does not suffer from any illegality, perversity or infirmity of any nature.

4. The findings recorded by ASJ, Charkhi Dadri read as:-

“Further, the said Will Ex.CW1/A was challenged before Civil Courts of competent jurisdiction by filing Civil Suits No.335/RBT of 2010/2012 titled "Hari Singh Vs. Karan Singh and others", decided vide judgment dated 12.08.2014, its appeal No. 13 of 2016, titled as "Hari Singh (deceased) through LRS Azad and others Vs. Karan Singh and others", decided vide order dated 07.12.2016, Civil Suit No. 416 of 2010 titled "Azad Singh Vs. Karan Singh and others", decided on 14.05.2014. its appeal No.55 of 2014 titled "Azad Singh Vs. Karan Singh and others", decided on 22.09.2016. In the decisions rendered in those civil suits and appeals, the Will Ex.CW1/A was found legal and valid. Once, Civil Court of competent jurisdiction has already adjudicated that the Will

Ex.CWI/A has been legal, genuine and valid one, the learned rial Court neither committed any illegality nor of any infirmity in concluding that no offence of any nature is made out in the complaint to summon the respondents. It appears that the revisionist-complainant has been trying to cheat the Court by not disclosing upon the aspect of decisions of competent Civil Courts qua the will Ex.CW1/A and by not producing knowingly and willfully the copy of the judgments passed in Civil Suits and appeals.

Coming to the oral evidence led by revisionist-complainant. He himself appeared as CW-01 but again stated version against the available record relating to the "Abiyana" receipts Mark-A and Mark-B as well with regard to the Will Ex.CWI/A. The revisionist-complainant did not produce even single iota of evidence that any Court of law of competent jurisdiction, ever declared the "Abiyana" receipts Mark-A and Mark-B or the Will Ex.CW /A either being forged or false or fabricated. There is no finding either in the above mentioned Civil Suits or in appeals that any of the respondents ever impersonated over the Abiyana" receipts Mark-A and Mark-B or the Will Ex.CW1/A. Thus, the testimony of revisionist complainant, recorded in preliminary evidence, is neither enough nor sufficient to infer from any angle commission of any offence of the complaint. respondents. It appears that tthe revisionist-complainant has been trying to cheat the Court by not disclosing upon the aspect of decisions of competent Civil Courts qua the will Ex.CWIA and by not producing knowingly and willfully the copy of the judgments passed in Civil Suits and appeals."

5. The petitioner has invoked revisionary jurisdiction of this court. The scope of interference while exercising power of revision against judgment of acquittal is very limited.

5.1 While adverting with Section 439 of old Criminal Procedure Code

which in its present avatar is Section 401, a four judge bench of Hon'ble Supreme

Court in *D. Stephens v. Nosibolla* 1951 SCC 184 has held:

“12. The revisional jurisdiction conferred on the High Court under Section 439 of the Code of Criminal Procedure is not to be lightly exercised, when it is invoked by a private complainant against an order of acquittal, against which the Government has a right of appeal under Section 417. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice. This jurisdiction is not ordinarily invoked or used merely because the lower court has taken a wrong view of the law or misappreciated the evidence on record.”

5.2 A four judge bench of Hon’ble Supreme Court reiterating the above opinion in *Logendranath Jha v. Polai Lal Biswas* 1951 SCC 856 has held:

“9. ... Though sub-section (1) of Section 439 authorises the High Court to exercise, in its discretion, any of the powers conferred on a court of appeal by Section 423, sub-section (4) specifically excludes the power to ‘convert a finding of acquittal into one of conviction’. This does not mean that in dealing with a revision petition by a private party against an order of acquittal, the High Court could in the absence of any error on a point of law, reappraise the evidence and reverse the findings of facts on which the acquittal was based, provided only it stopped short of finding the accused guilty and passing sentence on him.

10. By merely characterising the judgment of the trial court as ‘perverse’ and ‘lacking in perspective’, the High Court cannot reverse pure findings of fact based on the trial court's appreciation of the evidence in the case. That is what the learned Judge in the court below has done, but could not, in our opinion, properly do on an application in revision filed by a private party against acquittal”.

5.3 A three judge bench of Hon’ble Supreme Court in *K. Chinnaswamy Reddy v. State of A.P.* (1963) 3 SCR 412 has observed:

7. *It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be: where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of Section 439(4). We have therefore to see whether the order of the High Court setting aside the order of acquittal in this case can be upheld on these principles.*

5.4 A two judge bench of Hon'ble Supreme Court after noticing its previous judgments in *Mahendra Pratap Singh v. Sarju Singh* (1968) 2 SCR 287 has held:

“8. *The practice on the subject has been stated by this Court on more than one occasion. In D. Stephens v. Nosibolla* [1951 SCC 184 : AIR 1951 SC 196 : 1951 SCR 284] only two grounds are mentioned by this Court as entitling the High Court to set aside an acquittal in a revision and to order a retrial. They are that there must exist a manifest illegality in the judgment of the Court of Session ordering the acquittal or there must be a gross miscarriage of justice. In explaining these two propositions, this Court further states that the High Court is not entitled to interfere even if a wrong view of law is taken by the Court of Session or if even there is misappreciation of evidence. Again, in *Logendranath Jhav. Polai Lal Biswas* [1951 SCC 856 : AIR 1951 SC 316 : 1951 SCR 676] this Court points out that the High Court is entitled in revision to set aside an acquittal if there is an error on a point of law or no appraisal of the evidence at all. This Court observes that it is not sufficient to say that the judgment under revision is ‘perverse’ or ‘lacking in true correct perspective’. It is pointed out further that by ordering a retrial, the dice is loaded against the accused, because however much the High Court may caution the subordinate court, it is always difficult to re-weigh the evidence ignoring the opinion of the High Court. Again in *K. Chinnaswamy Reddy v. State of A.P.* [AIR 1962 SC 1788 : (1963) 3 SCR 412] it is pointed out that an interference in revision with an order of acquittal can only take place if there is a glaring defect of procedure such as that the Court had no jurisdiction to try the case or the Court had shut out some material evidence which was admissible or attempted to take into account evidence which was not admissible or had overlooked some evidence. Although the list given by this Court is not exhaustive of all the circumstances in which the High Court may interfere with an acquittal in revision it is obvious that the defect in the judgment under revision must be analogous to those actually indicated by this Court”.

6. The Hon’ble Supreme Court in a catena of judgments while dealing with scope and powers of the appellate/revisionary courts in dealing with an appeal/revision against an order of acquittal has elucidated:

1. An appellate court has full power to review, reappraise 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.
7. In the present case, Civil Court as well Appellate Court has already declared 'Will' in question as genuine and valid, thus, there is no reason in criminal proceedings to doubt validity of Will, similarly, no finding qua validity of document mark 'A' and 'B' has been doubted in Civil Court, though civil dispute between the parties was pending. The petitioner did not disclose fact of pendency and thereafter, disposal of civil suit before trial Court, and revisionary Court has dismissed petition after noticing findings of Civil Court.
8. In view of the above narrated facts, having regard to the findings recorded by trial court including accepted legal position, this Court is of the considered

opinion that in the case at hand there is no infirmity or irregularity in the impugned order passed by the trial court. Accordingly, this Court fully agrees with the finding recorded by trial Court. The impugned order being speaking, based upon correct appreciation of facts, applicable law & judicial precedents and well-reasoned needs no interference of this Court. Accordingly, the petition is dismissed.

(JAGMOHAN BANSAL)
JUDGE

22.11.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No