

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-1350-SBA-2005

Date of Decision: 30th November, 2022

State of Punjab

Appellant

Versus

Mohan Singh

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Arun Luthra, DAG, Punjab.
Mr. J. S. Thind, Advocate for the respondent.

AVNEESH JHINGAN, J (Oral):

1. State of Punjab is in appeal against the acquittal of Mohan Singh (respondent) in FIR No. 112 dated 3.12.1997, under Sections 7, 13(1)(a) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the Act') registered at Police Station, Vigilance Bureau, Jalandhar.

2. The facts as put up by the prosecution are that the respondent posted as Medical Officer at Government Hospital, Sirhali Kalan, District Amritsar in the year 1993-94 demanded and accepted bribe of Rs.8200/- from Sham Lal for his treatment; Rs.5000/- from Jagtar Singh for treatment of his wife-Manjit Kaur and Rs.1100/- from Swaran Singh for the treatment of his father-Jarnail Singh. FIR was registered, after receipt of sanction to prosecute, charges were framed.

3. The prosecution to support its case examined sixteen witnesses.

4. In statement under Section 313 Cr.P.C., the respondent denied

the allegations and stated that it to be a case of false implication, as he had made reports against Gurmej Kaur Staff Nurse and Inderjit Singh, Pharmacist who were indulging in private practice as medical practitioners. He further stated that in departmental enquiry held on similar allegations, he was exonerated.

5. In defence, the appellant examined eight witnesses.

6. The trial court after considering the facts, appreciating the evidence concluded that the prosecution failed to prove the case and acquitted the respondent vide judgment dated 3.3.2005.

7. Learned counsel for the State submits that the trial court erred in acquitting the respondent. Prosecution witness PW1- Sham Lal had supported the case of prosecution and that testimony of PW13-Swarn Singh proved payment of Rs.1100/- to the respondent for treatment of his father.

8. Learned counsel for the respondent defends the impugned judgment. He submits that there are major variations in the depositions of the prosecution witnesses.

9. Heard learned counsel for the parties and perused the record.

10. The trial court had threadbare considered the evidence adduced. Sham Lal who had allegedly paid Rs.8200/- to the respondent for his treatment stated that he had borrowed Rs.1200/- from Harjit Singh (PW7) and Rs.500/- from Santosh (PW8). Further that Rs.5000/- was returned to him by respondent in the presence of a congress worker who had mediated. His deposition was not found reliable as the person who had mediated was neither named nor he was examined. Sham Lal had testified that the amount was paid in the presence of PW3-Sharanjit Kaur, whereas

Sharanjit Kaur had not deposed that she was present at the spot when the bribe was paid. PW7-Harjit Singh in his cross-examination admitted that no money was demanded by respondent from Sham Lal. Similarly, PW8-Santosh from whom Rs.500/- was borrowed by Sham Lal had not stated that she was present at the time of demand and acceptance of illegal gratification.

11. Another aspect was considered by the trial court that Sham Lal had sworn an affidavit Ex. DA to the effect that no illegal gratification was paid by him to the respondent. Sham Lal admitted his signatures on the affidavit. Attestation of the affidavit was proved by examining DW5-Sakattar Singh, Reader in the court of Naib Tehsildar, Patti.

12. Adverting to the payment made by Jagtar Singh for treatment of his wife Manjit Kaur. Jagtar Singh died during interregnum and Manjit Kaur was not examined. PW5-Harbans Singh, Brother-in-law of Manjit Kaur deposed and in cross-examination he admitted that in his presence there was no demand or acceptance of bribe by the appellant from Jagtar Singh. PW10-Joginder Kaur stated that Jagtar Singh had paid the amount to the respondent in her presence. Her statement was at variance with the deposition of her husband-Harbans Singh and she had stated that her husband never visited the hospital during the period when Manjit Kaur remained admitted. On the other hand, Harbans Singh stated that he along with his wife Manjit Kaur and brother Jagtar Singh had gone to the hospital.

13. The prosecution to prove the payment by Swarn Singh with regard to the treatment of Jarnail Singh, examined, PW4-Gurmej Kaur,

Staff Nurse who proved the admission of the patient on 16.12.1994. PW13-Swaran Singh had deposed that Rs.1100/- were paid to the respondent in the presence of Daljit Singh and Bittu but his statement was not corroborated as neither Daljit Singh nor Bittu were examined.

14. The time gap between the alleged payment made in 1993-94 and FIR being registered in the year 1997 was taken into consideration by the trial court. The case of the prosecution was found to be doubtful.

15. The scope of interference in judgment of acquittal is well settled.

16. In **Mrinal Das & others v. The State of Tripura, 2011 (9) Supreme Court Cases 479**, the Supreme Court after considering various judgments laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

“8) It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to reappreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should

not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are “compelling and substantial reasons”, for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed.”

17. A Division Bench of this Court in **State of Punjab v. Hansa Singh, 2001 (1) RCR (Criminal) 775**, while dealing with an appeal against acquittal, has opined:

“We are of the opinion that the matter would have to be examined in the light of the observations of the Hon'ble Supreme Court in Ashok Kumar v. State of Rajasthan, 1991(1) SCC 166, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.”

18. On appreciation of evidence, detailed reasons have been recorded for acquitting the respondent. No case is made out of factual or legal error, much less perversity. The view taken by the trial court is a plausible view.

19. No interference is called for in the impugned judgment.
20. The appeal is dismissed.

[AVNEESH JHINGAN]
JUDGE

30th November, 2022
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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |