

CRM-A-293 of 2020 (M)

[1]

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-293 of 2020 (M)

Date of Decision: 25th April, 2022

State of U.T., Chandigarh

Petitioner

Versus

Dalbara Singh & another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rajeev Anand, APP for UT, Chandigarh.

AVNEESH JHINGAN, J (Oral):

The application is filed seeking Leave to Appeal against acquittal of the respondents in FIR No. 4 dated 19.6.2015, under Sections 120-B IPC and Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the Act'). The application is accompanied by an application for condoning the delay of 35 days.

The brief facts are that a complaint was filed by Samardeep Singh alleging that he had exchanged his mobile with Rajiv and he had to receive Rs.4,000/- but same was not paid. Complaint was given in Police Station Mani Majra which was transferred to Beat Box, Hallo Majra. The complaint was entrusted to respondent-Head Constable-Akhtar Khan (respondent No.2). The complainant was called to the Beat Box and amount of Rs.2000/- was demanded from him to resolve the issue. A trap was laid on 19.6.2015. Massi Ram was made a shadow witness. The team of vigilance officials went to Beat Box, Hallo Majra, respondent-Akhtar

Khan was not there but respondent-Dalbara Singh was present and he was caught red handed.

Learned counsel for U.T., Chandigarh submits that the trial court has failed to appreciate the facts and circumstances of the case in entirety. A technical view has been taken that the prosecution has failed to prove the demand.

The Supreme Court in Criminal Appeal No. 261 of 2022—K. Shanthamma v. The State of Telangana, decided on 21.2.2022 held :

“7. We have given careful consideration to the submissions. We have perused the depositions of the prosecution witnesses. The offence under Section 7 of the PC Act relating to public servants taking bribe requires a demand of illegal gratification and the acceptance thereof. The proof of demand of bribe by a public servant and its acceptance by him is sine quo non for establishing the offence under Section 7 of the PC Act. In the case of P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and another (2015) 10 SCC 152, this Court has summarised the well-settled law on the subject in paragraph 23 which reads thus:

“23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a

corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder.”

(Emphasis supplied)

The trial court after considering the facts and appreciating the evidence concluded that apart from the deposition of complainant, no other evidence was produced to prove the demand of illegal gratification. The complainant while deposing had not supported the case of the prosecution. He rather stated that neither any bribe was demanded nor accepted, for resolving his dispute. It was deposed by complainant that he was made to sign on dotted line as complaint was dictated by the Vigilance officials. In the cross-examination, the complainant stated that he alongwith the shadow witness were made to sit in a car parked away from the Beat Box and later he came to know that vigilance officials had arrested respondent-Dalbara Singh.

The trial court held that the prosecution miserably failed to show that a demand for illegal gratification was made by Dalbara Singh and Akhtar Khan and further that Dalbara Singh accepted the amount on behalf of respondent-Akhtar Khan. From the testimony of the prosecution witnesses, it revealed that neither the demand of bribe was raised by respondents from the complainant in the presence of the shadow witness nor the acceptance of the amount in his presence. Moreover, admittedly Akhtar Khan was not present in the Beat Box when the trap was laid.

The Supreme Court in **Allarakha K. Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748**, held that where, in a case,

two views are possible, the one which favours the accused, has to be adopted by the Court.

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 as under:

“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.”

To the same effect is the ratio of the judgments of the Supreme Court in **State of Goa v. Sanjay Thakran (2007) 3 SCC 755** and in **Chandrappa v. State of Karnataka, (2007) 4 SCC 415**.

Similarly, in **Mrinal Das & others v. The State of Tripura, 2011 (9) Supreme Court Cases 479**, the Supreme Court, after looking into various judgments, has 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 re- appreciate, 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”

No case is made out of factual or legal error, much less perversity, in the impugned order. The view taken by the trial court is plausible one. No case is made out for grant of leave to file appeal.

The application for grant of leave to appeal is dismissed.

Since the application under Section 378(4) Cr.P.C. is dismissed

on merits, the application for condonation of delay also stands disposed of accordingly.

[AVNEESH JHINGAN]
JUDGE

25th April, 2022
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |