

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

CRA-D-737-DB-2015 (O&M)

Reserved on : 01.09.2022

Pronounced on : 12.09.2022

Ajit Singh

..... Appellant

Versus

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: Mr.Inderjit Sharma, Advocate
for the appellant.

Mr. Arjun Sheoran, DAG, Punjab.

Mr. Vivek K.Thakur, Advocate
for respondents No.2 to 7.

JAGMOHAN BANSAL, J.

1. The appellant at whose complaint FIR No.20 dated 28.03.2013 under Sections 379, 436, 427, 506, 148 and 149 IPC at Police Station Narot Jaimal Singh, District Pathankot was registered, has preferred the present appeal seeking setting aside of judgment and order dated 10.12.2014 whereby learned Additional Sessions Judge, Pathankot (for short 'trial court') has acquitted the respondents on the ground that prosecution has miserably failed to prove the guilt of accused beyond reasonable doubt.

Brief Facts:

2. The case of appellant is that he is engaged in the transport

business. On 05.02.2006, he got possession of land measuring 39 kanals 16 marlas situated in village Chak Akhwara for cultivation from Jarnail Singh who as per jamabandi for the year 2008-09 was in possession of aforesaid land being tenant. Jarnail Singh executed affidavit in favour of the appellant deposing that he has no objection if name of the appellant and his brother Avtar Singh is entered in the khasra Girdawari of the aforesaid land. The respondents No.2 to 7 (for short 'respondents') claiming ownership of the aforesaid land were interfering in the use of aforesaid land, thus Jarnail Singh filed a civil suit on 12.12.2003 against respondents seeking permanent injunction. Learned Civil Judge (Jr. Division), Pathankot vide order dated 01.06.2009 dismissed the aforesaid suit. LR of Jarnail Singh preferred an appeal and learned District Judge, Gurdaspur vide order dated 11.12.2010 set aside the order passed by learned Civil Judge and restrained the respondents from interfering or dispossessing the plaintiff from disputed land. On 09.03.2013 at about 9.00 p.m. the complainant/appellant accompanied by one Satnam Singh came to aforesaid land and found that the accused armed with deadly weapons were present on the aforesaid land. The respondents loaded the hut, inverter with battery, one gas stove with cylinder, utensils, one folding bed, four plastic chairs and one bed which were lying at aforesaid land, on a trolley of tractor make New Holland 5500 of Blue colour. The respondents caused damage to standing crop and while hurling threats left the place with articles. At some distance near Dhussi, the respondents threw the residential hut from the trolley

and caused damage to it. The appellant got registered afore-stated FIR which culminated into police report. The police report was presented before Illaqa Magistrate who committed the trial to the learned Sessions Judge.

3. The complainant appeared before learned trial Court as PW1 and Satnam Singh (PW2), Shakuntla Devi (PW3), Boor Singh (PW4) appeared as eye witnesses. The complainant to support his contention with respect to installation of hut and other household articles examined various witnesses including fabricator of hut and supplier of inverter.

4. Learned trial court vide judgment and order dated 10.12.2014 acquitted all the accused/respondents and appellant has filed present appeal seeking setting aside of aforesaid order passed by trial court. The Appellant at the first instance did not move an application under Section 378(3) seeking leave to appeal, however on being pointed out by co-ordinate bench of this court, appellant moved required application on 06.11.2017.

Findings of trial court:

5. Learned trial court has recorded findings on three issues namely (i) possession over disputed land (ii) manner of incident and (iii) delay in FIR.

5.1 On the question of possession over disputed land, learned trial Court has found that there is doubt about the possession of appellant over disputed land. Learned trial Court has found that appellant allegedly got possession from Jarnail Singh in 2006 whereas appeal

before District Judge was filed in 2009 and appellant/complainant chose not to become party and bring this fact in the knowledge of Appellate Court that they are in possession of land. The trial Court has further considered that Ajit Singh-appellant in his statement before Civil Court has claimed purchase of land whereas before the criminal Court, he pleaded that he got disputed land for management and cultivation purposes. The affidavit which was placed on record as Ex.P-1 indicated that appellant had purchased land from Jarnail Singh whereas case of appellant before trial Court was that he has got land for management and cultivation. The trial Court has further found that inspite of alleged affidavit furnished by Jarnail Singh, the appellant did not get land transferred in his name in the revenue record.

5.2 Learned trial Court with respect to manner of incident has found that as per complainant, the hut was installed at disputed land about 1-1½ months prior to alleged incident whereas as per Satnam Singh and Boor Singh alleged eye witnesses, the hut was constructed at disputed site about 2-3 months back. Shakuntla Devi wife of Jarnail Singh who had claimed to be an eye witness deposed before learned trial Court that hut was brought to the site at about 2 p.m. on the day of incident. There was not minor but substantial contradiction between statement of complainant and alleged eye witnesses. Tarlochan Singh who claimed to have fabricated alleged hut produced bill book which was neither having serial number in order nor bearing proper date. The cross examination of Tarlochan Singh

which is material for the present case is reproduced as under:-

“.. The bill book is not in serial order or date wise. It is also correct that even the serial numbers are not in order in the bill book and it depicts serial no. 736, 740, 742, 250, without number, 252, 253 etc with the intervening numbers missing, The previous receipt to Ex.PW8/A is dated 21.10.2012 and the next receipt to Ex.PW8/A is dated 01.03.2013 and the date of Ex. PW8/A is 03.02.2013... The next receipt is dated 03.09.20 and the complete year is not visible.....It is correct that in the next receipt, the date is 01.01.2013. The receipt next to it is undated and unnumbered and the next receipt is 29.01, without year and next to that is again 29.01...”

Learned trial Court with respect to installation of hut and its destruction found material contradiction in the stand of different witnesses. The bills produced by fabricator of alleged hut and supplier of inverter with battery were found doubtful as there was no continuity in serial number and date of alleged bills vis-a-vis bill book. Learned trial court further found that there is material contradiction in the location of alleged articles i.e. hut, gas cylinder, bedding, inverter with battery and their destruction. As per few witnesses, the hut was destroyed by putting kerosene oil whereas as per one eye witness, the respondent collected straw grass and threw it on the hut and grass was set on fire.

5.3 Learned trial Court on the question of delay in registration of FIR has held that delay of 19 days is fatal and there are chances of introduction of embellishment or coloured version in the prosecution story due to previous enmity. The appellant had lodged different FIRs against respondents alleging destruction of standing crop and theft of

agricultural implements. The appellant has disclosed different reasons for delay in lodging FIR at different point of time. The appellant before police stated that compromise talks were going on from 09.03.2013 to 28.03.2013. However, during trial appellant took contradictory stand of police inaction while asserting that the matter was reported to the police on the day of incident.

Contention of Appellant:

6. Mr. Sharma learned counsel for the appellant vehemently argued the matter and raised three issues namely (i) effect of finding of civil Court or criminal trial, (ii) minor variation in statement of witnesses and (iii) delay in lodging the FIR.

Ld. Counsel contended that learned District Judge, Gurdaspur vide order dated 11.12.2010 had restrained the respondents from interfering or dispossessing Jarnail Singh/plaintiff from disputed land and thus learned trial Court contrary to settled law has recorded findings qua possession of disputed land. With respect to variation in statement of witnesses, he contended that minor variation in statements cannot vitiate the trial. With respect to delay in FIR, he contended that incident in question took place on 09.03.2013 and FIR was registered on 28.03.2013 i.e. after a delay of 19 days because settlement talks were under process and on account of failure of settlement proceedings, the appellant opted to file complaint with police authorities. Thus, appellant has reasonably and sufficiently explained the cause of delay. Learned counsel in support of his above contentions cited following judgments of Hon'ble Supreme

Court which are discussed as below:

In **K.G. Premshanker v. Inspector of Police, (2002) 8 SCC 87: 2003 SCC (Cri) 223 : 2002 SCC Online SC 859 at page 97** the court while dealing with effect of findings of civil court on criminal trial has held:

30. What emerges from the aforesaid discussion is — (1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principle of res judicata may apply; (3) in a criminal case, Section 300 CrPC makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.

31. Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by A on B's property, B filed a suit for declaration of its title and to recover possession from A and suit is decreed. Thereafter, in a criminal prosecution by B against A for trespass, judgment passed between the parties in civil proceedings would be relevant and the court may hold that it conclusively establishes the title as well as possession of B over the property. In such case, A may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, the first question which would require consideration is whether judgment, order or decree is relevant, if relevant its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case.

In **Madhu @ Madhuranatha v. State of Karnataka, (2014) 12**

SCC 419: (2014) 6 SCC (Cri.) 765:2013 SCC Online SC 1048 at page 428, Hon'ble Court has adverted with question of variation in statement of witnesses and held:

16. In Rohtash Kumar v. State of Haryana [(2013) 14 SCC 434 : (2014) 4 SCC (Cri) 238 : JT (2013) 8 SC 181] this Court considered the issue of discrepancies in the depositions. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters which do not affect the core of the case of the prosecution must not prompt the court to reject the evidence in its entirety. Therefore, irrelevant details which do not in any way corrode the credibility of a witness should be ignored. The court has to examine whether evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence, more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken, so as to render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter, and shake the basic version of the prosecution witness.

A similar view has been reiterated in **State of U.P. v. M.K. Anthony (1985) 1 SCC 505 : 1985 SCC (Cri) 105: AIR 1985 SC 48**; **State v. Saravanan [(2008) 17 SCC 587 : (2010) 4 SCC (Cri.) 580]** and **Vijay v. State of M.P. [(2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639]**.

On the question of delay in FIR, in **Harbans Kaur v. State of Haryana, (2005) 9 SCC 195 : 2005 SCC (Cri) 1213 : 2005 SCC Online SC 454 at page 198**, Hon'ble Supreme Court has held:

7. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield the

actual culprit and falsely implicate the accused. No evidence has been led in this regard. So far as the delay in lodging the FIR is concerned, the witnesses have clearly stated that after seeing the deceased in an injured condition, immediate effort was to get him hospitalized and get him treated. There cannot be any generalisation that whenever there is a delay in lodging the FIR, the prosecution case becomes suspect. Whether delay is so long as to throw a cloud of suspicion on the seeds of the prosecution case, would depend upon the facts of each case. Even a long delay can be condoned if the witnesses have no motive of implicating the accused and have given a plausible reason as to why the report was lodged belatedly. In the instant case, this has been done. It is to be noted that though there was cross-examination at length, no infirmity was noticed in their evidence. Therefore, the trial court and the High Court were right in relying on the evidence of the prosecution witnesses.

Similarly, in **Baldev Singh v. State of Punjab, (2014) 12 SCC 473 : (2014) 6 SCC (Cri) 810 : 2013 SCC Online SC 875 at page 483** Hon'ble Supreme Court has held:

17. The first question that we have to decide is whether the delay of 2 months and 21 days in lodging the FIR could make the prosecution case one which is not believable. There cannot be any doubt that delay in the lodging of the FIR often results in embellishment as well as the introduction of a distorted version of what may have actually happened, but the facts of each case have to be examined to find out whether the delay in lodging the FIR is fatal for the prosecution case.

18. In the present case, we find from the evidence of PW 3 that the terrorists were active in the State of Punjab and the police was taking action against the terrorists and in such a state of affairs, PW 3 was apprehensive of the consequences of lodging an FIR against the appellants, one of whom was a Deputy Superintendent of Police in control of several police stations and the other was a police constable. Hence, after seven members of his family were picked up on 29-10-1991, PW 3 waited for 2 months and 21 days with the hope that they would be released by the police and only after all his efforts to get them released failed, he lodged complaint on 19-1-1992 (Ext. PB). The fact that the complainant addressed the complaint (Ext. PB) not to the police station but to the Director General

of Police, Punjab, is enough evidence of the fact that PW 3 was afraid of lodging the complaint to the local police station which was under the control of the appellant Baldev Singh.

Contention of the Respondents:

7. Mr. Vivek K. Thakur, learned counsel for the respondents contended that learned trial court has passed a well reasoned order. The civil proceedings did not take place between the appellant and the respondents, thus there is no effect of outcome of civil proceedings and any order passed by learned Civil Court cannot affect criminal proceedings especially when the civil proceedings did not take place between appellant and respondents. With respect to delay in lodging FIR, he contended that there was previous enmity between both the parties and prior to the FIR in question and a number of FIR(s) were got registered against respondents for destruction of standing crop and agricultural equipment which are on record as Ex.D6 to D9. Thus, delay of 19 days is unexplained.

In support of his contention learned counsel for the respondents cited following judgments of Hon'ble Supreme Court.

Hon'ble Supreme Court in **Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370 : 2005 SCC (Cri) 1101 : 2005 SCC Online SC 531 at page 389** while adverting with civil vis a vis criminal trial has held:

32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any

statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against an order directing filing of a complaint under Section 476 of the old Code, the following observations made by a Constitution Bench in M.S. Sheriff v. State of Madras [1954 SCR 1144 : AIR 1954 SC 397 : 1954 Cri LJ 1019] give a complete answer to the problem posed: (AIR p. 399, paras 15-16)

“15. As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard-and-fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

16. Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust. This, however, is not a hard-and-fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under Section 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished.”

In **Upendra Pradhan v. State of Orissa, (2015) 11 SCC 124 : (2015) 4 SCC (Cri) 309 : 2015 SCC Online SC 397 at page 128** on the question of presumption of innocence before appellate court, the Supreme Court has held:

14. Taking the first question for consideration, we are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognized as a human right by this Court. In Narendra Singh v. State of M.P. [Narendra Singh v. State of M.P., (2004) 10 SCC 699 : 2004 SCC (Cri) 1893] , this Court has recognised presumption of innocence as a human right and has gone on to say that: (SCC pp. 708 & 709, paras 30-31 & 33)

“30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled that there is a long distance between ‘may be’ and ‘must be’.

31. It is also well known that even in a case where a plea of alibi is raised, the burden of proof remains on the prosecution. Presumption of innocence is a human right. Such presumption gets stronger when a judgment of acquittal is passed. This Court in a number of decisions has set out the legal principle for reversing the judgment of acquittal by a higher court (see Dhanna v. State of M.P. [Dhanna v. State of M.P., (1996) 10 SCC 79 : 1996 SCC (Cri) 1192], Mahabir Singh v. State of Haryana [Mahabir Singh v. State of Haryana, (2001) 7 SCC 148 : 2001 SCC (Cri) 1262] and Shailendra Pratap v. State of U.P. [Shailendra Pratap v. State of U.P., (2003) 1 SCC 761 : 2003 SCC (Cri) 432]), which had not been adhered to by the High Court.

33. We, thus, having regard to the post-mortem report, are of the opinion that the cause of death of Bimlabai although is shrouded in mystery but benefit thereof must go to the appellants as in the event of there being two possible views, the one supporting the accused should be upheld.”

(emphasis supplied)

15. The decision taken by this Court in the aforementioned case, has been

further reiterated in State of Rajasthan v. Raja Ram [State of Rajasthan v. Raja Ram, (2003) 8 SCC 180 : 2003 SCC (Cri) 1965], wherein this Court observed thus: (SCC pp. 186-87, para 7)

“7. ... Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. (See Bhagwan Singh v. State of M.P. [Bhagwan Singh v. State of M.P., (2002) 4 SCC 85 : 2002 SCC (Cri) 736]) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.”

(emphasis supplied)

16. Therefore, the argument of the learned counsel for the appellant that the High Court has erred in reversing the acquittal of the appellant-accused stands good. The Additional Sessions Judge was right in granting him benefit of doubt. The view which favours the appellant-accused has to be considered and we discard the opposite view which indicates his guilt.

In Dhanapal v. State By Public Prosecutor, Madras, (2009) 10 SCC 401 : (2010) 1 SCC (Cri.) 336 : 2009 SCC Online SC 1576 at page 414 while dealing with scope of interference at appellate stage, the Supreme Court has held:

“39. The following principles emerge from the cases above:

- 1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court acquittal bolsters the presumption that he is innocent.*
- 2. The power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the appellate court must give due weight and consideration to the decision of the trial court.*
- 3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.*
- 4. The appellate court may only overrule or otherwise disturb the trial court acquittal if it has “very substantial and compelling reasons” for doing so.*
- 5. If two reasonable or possible views can be reached—one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused.”*

7.1 Learned State counsel submitted that State has not filed appeal against the impugned order.

Discussion & Findings:

8. From the reading of judgments cited by both the counsels, it can be gleaned that there is no sacrosanct, hard & fast or straight jacket formula holding that findings recorded by Civil Court vis-a-vis Criminal Court are binding. The binding effect of findings recorded by Civil Court or Criminal Court depends upon nature of dispute, evidences and findings recorded. In the case of civil proceedings, the findings are more or less based upon preponderance of evidences whereas in case of criminal trial, the prosecution has to establish the guilt of the accused beyond reasonable doubt. The onus lies upon the prosecution to bring the case home and prove the guilt beyond

reasonable doubt.

9. The Hon'ble Supreme Court has time and again adverted the question of effect of criminal proceedings vis-a-vis civil proceedings. Most of the judgments cited by both the counsels deal with stay of criminal proceedings during the pendency of criminal proceedings or stay of civil proceedings during the pendency of criminal proceedings.

Besides judgments cited by both sides, it would be appropriate to look at following judgments of Hon'ble Supreme Court.

In **Nelson Motis v. Union of India (1992) 4 SCC 711**, the Supreme Court held that the disciplinary proceedings can be legally continued even where the employee is acquitted in a criminal case which are different from those in the departmental proceedings. The Court observed :

“5. So far the first point is concerned, namely whether the disciplinary proceedings could have been continued in the face of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and does not merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding. Besides, the Tribunal has pointed out that the acts which led to the initiation of the departmental disciplinary proceeding were not exactly the same which were the subject-matter of the criminal case.”

In **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679** after adverting with its previous enunciation of law, in Para 22 laid down guidelines with respect to stay of departmental proceeding when criminal proceedings on the same set of allegations

are pending before competent court. The appellant therein was acquitted in criminal trial, however in disciplinary proceedings he was dismissed from service. The order of dismissal was passed ex-parte and appellant was not given subsistence allowance during the period of suspension. The Supreme Court held:

34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, “the raid conducted at the appellant's residence and recovery of incriminating articles therefrom”. The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the “raid and recovery” at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand.

35. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case.

By majority a three judge bench of the Supreme Court in **Radheshyam Kejriwal v. State of W.B., (2011) 3 SCC 581**, while

dealing with outcome of departmental vis a vis criminal proceeding has concluded:

38. The ratio which can be culled out from these decisions can broadly be stated as follows:

(i) Adjudication proceedings and criminal prosecution can be launched simultaneously;

(ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;

(iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;

(iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;

(v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.

10. In the case in hand, the civil proceedings ensued between Jarnail Singh and respondents. Jarnail Singh filed a civil suit seeking permanent injunction on 12.12.2003 and he passed away in 2006. As per the appellant, he got possession over disputed land in 2006.

Learned Civil Judge, Pathankot dismissed the suit of Jarnail Singh on

01.06.2009 i.e. after the demise of Jarnail Singh. As per complainant, they got possession over disputed land in 2006, thus, there was no reason for LR's of Jarnail Singh to file appeal before learned District Judge, Gurdaspur seeking setting aside of order dated 01.06.2009 passed by Learned Civil Judge, Pathankot. The facts on record indicate that suit was pending and adjudicated between LR's of Jarnail Singh and respondents and appellant was not party to the aforesaid suit. Jarnail Singh passed away in 2006 and as per the complainant, he handed over possession to appellant and his brother in 2006. Had appellant been in possession of land, there was no question for LR's of Jarnail Singh to file appeal against the order of Civil Judge. The appellant is claiming that he was in possession of land since 2006 and civil suit was dismissed in 2009. The LR's of Jarnail Singh filed appeal before learned District Judge, Gurdaspur and appellant inspite of having claimed possession over disputed land chose to remain silent and did not participate in the proceedings pending before learned District Judge. The appellant has claimed that Jarnail Singh furnished an affidavit to the effect that appellant and his brother could get Jamabandi amended and substitute their name in place of Jarnail Singh as tenant. The complainant got affidavit to this effect in 2006 whereas at the time of even incident, Jarnail Singh was shown tenant in the revenue record. It is also disputed that whether Appellant had purchased land in question or got management and control over it.

11. The afore-stated facts collectively indicate that findings

recorded by learned trial Court are based upon independent evidences and findings recorded by civil Court had no bearing over trial against respondents. The nature of witnesses, the nature of *lis*, interest of parties and allegations were totally different in criminal proceedings vis-a-vis civil proceedings which concluded between LR's of Jarnail Singh and respondents.

12. Harpinder Singh (Electrician) appeared as PW7 to support purchase of inverter with battery by complainant. The original bill and carbon copy retained by shopkeeper was bearing different ink. Learned trial Court has rightly concluded that evidence of Harpinder Singh cannot be relied upon.

Tarlochan Singh-PW8 alleged fabricator of hut submitted bill dated 03.02.2013 and on scrutiny of bill book presented by him, it was found that there is no continuity of serial number and date in the bill book. Even, the date was not disclosed in few bills. It indicates that the bill presented by Tarlochan Singh can not be relied upon.

The appellant claimed installation of hut about 1-1½ months prior to date of alleged incident whereas other witnesses except Shakuntla Devi claimed installation 2-3 months back. Shakuntla Devi claimed that hut was installed on the date of incident itself at 2 p.m. The statements of different witnesses especially Shakuntla Devi proved contrary to each other and contradiction was not minor which could be ignored.

Besides material contradiction about existence, the different witnesses disclosed different location of alleged articles i.e. hut,

inverter, stove and bed. Learned trial Court on the basis of statements of different witnesses found that place of hut on the disputed land is not established and raises doubt on the authenticity of prosecution version.

The contradiction does not rest here. As per complainant and two eye witnesses, kerosene oil was poured on hut and set it on fire whereas one eye witness deposed that straw grass was collected and thrown on hut. The grass was set on fire and when the grass caught fire, the hut was burnt.

There is material contradiction on different counts namely (i) manner of possession i.e. purchase versus management, absence of change in revenue record, filing of appeal by LR's instead of appellant (ii) purchase and installation of alleged articles and (iii) location of alleged articles as well their destruction, thus it cannot be held that there is minor contradiction in statement of witnesses which can be ignored. The appellant has failed to appreciate that proceedings were not pending before civil court or some quasi judicial authority. In criminal trial, the standard of proof to hold someone guilty is very high and burden lies upon prosecution.

13. In the judgments cited by both sides, Hon'ble Supreme Court has held that delay in registration of FIR is not fatal in every case. Learned trial Court is supposed to look into facts and circumstances which delayed registration of FIR. If the reasons explained for delay are cogent, delay can be ignored and prosecution story cannot be rushed aside simply on the ground that there is delay in registration of

FIR.

There was enmity between appellant and respondents. Appellant has filed different FIR(s) against the respondents alleging destruction of standing crop or theft of agricultural implements. As there was already enmity between both the parties, it cannot be claimed that compromise talks were going on, which resulted into delay in lodging of the FIR. It is further interesting to notice that appellant at one point of time contended that compromise talks were going on, thus delay took place. However during the trial appellant contended that delay took place on account of inaction on the part of police. Learned trial Court has rightly concluded that there was delay in registration of FIR and facts and circumstances do not warrant ignorance of said delay.

14. The Hon'ble Supreme Court has repeatedly held that benefit of doubt ensues to accused. If two views are possible, the benefit of doubt must be granted to accused. It has been further held that if two views are possible, the order of acquittal should not be set aside by High Court because there is double presumption of innocence. The Hon'ble Supreme Court in **para 39 in Dhanapal v. State By Public Prosecutor, Madras, (2009) 10 SCC 401** while dealing with scope of interference at appellate stage has held:

“39. The following principles emerge from the cases above:

- 1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court acquittal bolsters the presumption that he is innocent.*
- 2. The power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's*

conclusion with respect to both facts and law, but the appellate court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court acquittal if it has “very substantial and compelling reasons” for doing so.

5. If two reasonable or possible views can be reached—one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused.”

15. Applying the principles laid down by Hon'ble Supreme Court qua binding effect of findings recorded by civil Court vis-a-vis criminal court, delay in registration of FIR, variation in statements made by witnesses, we find learned Trial Court has recorded well reasoned findings which warrant no interference.

16. The appellant has miserably failed to prove manner of the incident. The appellant had failed even to prove existence of hut and other articles. There was material contradiction between statements made by different witnesses. Leaving aside fabricator and supplier of alleged articles, there is material contradiction between depositions of alleged eye witnesses. The appellant miserably failed to prove location of alleged articles as well as their destruction. Thus, learned trial Court has fairly and reasonably held that prosecution has failed to prove manner of incident and location of articles. The opinion expressed by the trial court is not only a possible view but also it is fair and reasonable and cannot be termed as perverse in any manner, thus warranting no interference.

17. As noted above, there is always presumption of innocence and in case of acquittal, there is double presumption. The burden lies upon prosecution to prove the guilt beyond reasonable doubt. The learned trial Court has passed a detailed, reasoned and speaking order and we find no infirmity in the said order. There is no manifest error, illegality or non-application of mind or non-appreciation of evidence which could compel us to form an opinion different from the opinion formed by the learned Trial Court. Finding no merit in the present appeal, we are of the considered opinion that leave to appeal deserves to be declined and accordingly application seeking leave to appeal as well as appeal is dismissed.

(G.S.SANDHAWALIA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

12.09.2022
anju

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>