217 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-598-2020

Date of Decision: 21st November, 2022

State of Punjab

... Applicant

Versus

Kartar Singh

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Jaiteshwar Singh, AAG, Punjab.

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AVNEESH JHINGAN , J.(Oral)

1. This is an application for grant of leave to appeal against the judgment acquitting Kartar Singh (respondent) in FIR No. 10, dated 9th September, 2014, under Sections 13(1) 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 relevant facts as per the prosecution are that respondent was posted as Patwari in Revenue Area Goonda, Tehsil Sultanpur Lodhi, District Kapurthala. He was having assets more than his known sources of income. The period considered for checking was 1st April, 2003 to 31st March, 2013. The income of the respondent was Rs. 53,95,734/- and he had spent Rs. 72,63,179/-.

3. In trial prosecution examined eighteen witnesses and respondent examined five witnesses in his defence.

4. The trial Court took into consideration that PW-17 DSP Kulwant Rai, Investigating Officer while facing the cross-examination admitted that as per the first inquiry report of Sh. Nirmaljeet Sahota, it was recommended that no criminal proceedings should be initiated and only departmental action was recommended. He further admitted that total

income of the respondent was found to be Rs.89,70,330/-. He further stated that in the Anupurvak report prepared by Nirmaljeet Sahota, it was found that accused had an income of Rs. 82,90,327/- and expenses of Rs. 72,63,179/-. In the second report also only departmental action was recommended. He admitted that during the investigation it revealed that the respondent had received Rs.93,855/-, Rs. 6,00,000/-, Rs. 1,08,150/- and Rs. 1,59,748/- from his relatives residing abroad and the said amounts were not taken into account by the Sectional Officer (Audit). Further that Rs. 13,00,000/- received by the respondent for entering the agreement to sell 05 kanal 03 marlas of land was not considered. It would be appropriate to note that the agreement to sell was substantiated from the register of the stamp vendor and the copy was available on the file.

5. The Investigation Officer had recorded the statement of the Income Tax Official during the investigation. It was admitted that the respondent had agricultural income in financial year 2003-04, 2004-05 and 2010-2011. PW-12 Varun Sehgal, Commission Agent had produced the Bahi Khata, Nakal Khata for the year 2010-2011 and copies of 'J' forms for the year 2010. After considering the facts and appreciating the evidence, it was concluded that income of Rs. 29,00,000/- approximately was not taken into consideration and it took care of the gap between the income and alleged excess expenditure and respondent was acquitted.

6. Learned State counsel submits that the income shown by the respondent from the agriculture and the amount received from the relatives is doubtful.

7. The scope of interference in case of acquittal is well settled.

7.1 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 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 jurisprudenceevery 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."*

7.2 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."*

8. The prosecution has to prove its case beyond reasonable doubt. The defence taken by the accused has to be probable. The onus on the accused is not as heavy as on the prosecution. The agricultural income claimed by the respondent was duly substantiated by production of record of commission agent and copy of 'J' Forms. The Income Tax Inspector appeared as a witness and brought income tax returns for the years 2005-06, 2006-07, 2008-09, 2010-2011, 2012-13 and 2013-14. The amount of sale consideration received on the basis of the agreement to sell was duly substantiated by the respondent by producing the agreement to sell.

9. There is no factual or legal error, much less perversity, in the impugned judgment. The view taken by the trial Court is plausible one. No case is made out for interference in the judgment of acquittal.

10. The application for grant of leave to appeal is dismissed.

(AVNEESH JHINGAN)
JUDGE

21st November, 2022

Parveen Sharma

Whether reasoned/speaking Yes
Whether reportable Yes