

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1056-MA-2016

Date of Reserved: 6.12.2022

Date of Decision: 20.12.2022

Radhey Shyam

.....Appellant

Vs.

Chhabil Dass and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Kuldip S.Chaudhary, Advocate,
for the appellant.

Mr. S.S.Mor, Advocate,
for respondent Nos.1 and 3

None for respondent No.2

HARPREET KAUR JEEWAN, J.

1. Challenge by the appellant in the present application filed under Section 378 (4) Cr.P.C. is for grant of leave against the judgment of acquittal dated 08.02.2016 passed by the Judicial Magistrate Ist Class, Hisar.

Vide the impugned judgment, the trial Court acquitted the respondents-accused of the charge, which had been framed against them under Sections of 192, 467, 471 and 203 of the Indian Penal Code (for short 'the IPC') in FIR No. 203 dated 27.11.2001 registered at Police Station Uklana, District Hisar.

2. As per the version of the appellant, he was implicated in a false case of cheating under Section 420 of the IPC, in FIR No.203 dated

27.11.2001, registered at Police Station Uklana, District Hisar, with *mala fide* intention by the respondents-accused. Ultimately, the appellant was acquitted in the said case vide judgment dated 27.10.2010 passed by JMIC, Hisar. Respondent/accused No.2 Ram Sarup, to whom direction for the registration of FIR against respondent No.1 and 3 to 6 under Section 412 of the IPC was made, moved altogether in different direction and framed a case under Section 420 IPC against the petitioner/complainant with mala fide intention and on the abetment and conspiracy with respondent/accused No.1, Chhabil Das and another respondents. The brief facts set up by the complainant in his complaint are as under:

- (a) One Brahama Nand, who is brother of the petitioner filed a private criminal complaint in which respondent Chhabil Dass was convicted and sentenced under Section 395 read with Section 397 vide judgment dated 05.05.1999 passed by Additional Sessions Judge, Hisar.
- (b) During the course of trial in the said case, Brahama Nand had filed an application before the High Court for seizure of the truck and tins of mustard oil and an order dated 06.08.1998 was passed in COCP No.949 of 1998 as '*disposed of with the direction to the Chief Judicial Magistrate, Hisar to ensure that the seizure warrant issued by the High Court is executed*'. The police submitted a report that the mustard oil had been sold by respondent Chhabil Dass to one Jogi Ram, proprietor of M/s Bansal Trading Company, Sector-26, Grain Market. During the investigation, it was also revealed that the respondent had sold a truck to certain persons. Since the robbed property was already disposed of by respondent Chhabil Dass,

therefore, an FIR was ordered to be registered by the JMIC under Section 412 of the IPC against the purchaser of the truck.

- (c) However, respondent Ram Sarup ASI, did not take any action against respondent Chhabil Dass for selling the said property and also took no action against respondent Jogi Ram and others for purchasing the said property. He submitted a report that truck No.HYW-7417 (hereinafter referred to as '*the truck*') containing 259 tins of mustard oil (hereinafter referred to as '*the Tins*') were not robbed but these were delivered by the appellant-complainant Radhey Shyam to respondent Chhabil Dass.
- (d) The entire investigation was conducted by respondent ASI Ram Sarup with malafide intention to protect the respondent Chhabil Das, who was already convicted under Section 395/397 IPC and further to protect him from prosecution under Section 412 IPC for robbing of the truck (No.HYW-7417) and the tins belonging to Brahama Nand.
- (e) In furtherance of the said common object, respondent Chhabil Das with the help of his Accountant Ishwar Dass, respondent No.5 fabricated and prepared a false letter on a blank signed plain paper of the petitioner which was lying in the possession of the respondent-accused Chhabil Dass. The said letters was fabricated by typewriting the alleged statement of the petitioner dated 23.03.1993 showing that the said robbed truck along with the tins were delivered to him by the petitioner Radhey Shyam in exchange of another truck HR-20-4277 given earlier. It was also written in the said statement showing an undertaking that the petitioner/complainant could make the outstanding payment of Rs.3,00,000/- within three days. It was

further written in the said letter that in case of failure, the said truck and the tins would be forfeited.

- (f) In order to regularize the aforesaid letter dated 23.03.1993, respondent-accused Chhabil Dass with the help of his Accountant Ishwar Dass fabricated and prepared another false letter on another blank signed paper of the petitioner lying in his possession. The said letter dated 20.04.1993 was fabricated and written in the handwriting of Ishwar Dass showing that the said truck and the tins as delivered to him by the petitioner Radhey Shyam on 23.03.1993 was being taken back on making the payment of Rs.4 lakh to respondent-accused Chhabil Dass.
- (g) The accused thereafter fabricated some more blank signed plain papers of the petitioner-complainant by preparing letters of them showing the possession of the truck with the petitioner/complainant and also showing that the complainant had plied the truck before and after the date of robbery i.e.23.03.1993.
- (h) Respondents Chhabil Dass further fabricated another letter dated 07.01.1994 showing the sale of truck No.HYW 7417 by the complainant to one Radhey Krishan for a consideration of Rs.1,50,000/-. Respondents Chhabil Dass handed over the said receipt to respondent Ram Sarup ASI.
- (i) The said fabrications were done to falsely implicate the appellant and Brahama Nand and to create a defence in the appeal which was pending against the order of conviction of the respondent Chhabil Dass in the High Court.
- (j) ASI Ram Sarup obtained an FSL Report from Madhuban, Karnal,

wherein an opinion was given that the said documents were fabricated and forged and written at later date on a paper on which signatures of the complainant had existed before its execution.

(k) The appellant was acquitted by the Court of JMIC, vide judgment dated 27.10.2010 holding that the documents are false and the appellant was held innocent on the basis of the FSL report procured by the prosecution.

(l) The case under Section 412 of the IPC was registered as per the orders of the CJM, therefore, ASI Ram Sarup was not authorized to investigate as to whether the robbery has taken place or not and it was not in his domain to nullify the said order.

3. After recording the preliminary evidence, accused-respondents were summoned to face the trial under Sections 192, 203, 467 and 471 of the IPC by the Area Magistrate, vide order dated 26.02.2013.

4. After recording the pre-charge evidence, charges were framed against the respondents Ishwar, Chhabil Dass and Ram Sarup whereas charge under Section 203 of the IPC was framed against accused Ram Sarup, vide order dated 04.01.2016. After framing of the charge, the defence further cross-examined PW1 Radhey Shyam (appellant) and closed the after charge evidence.

5. The statement of the accused under Section 313 of the Cr.P.C. was recorded and they denied the version of the appellant and also tendered into evidence copy of the order dated 02.07.2013 passed by the High Court (Ex.DX/1)

6. The trial court considered the evidence of the appellant regarding the following documents which were alleged to have been

fabricated by the respondents-accused:-

- (i) Ex.P5: Statement of complainant showing the delivery of the truck that tins of the mustard oil in exchange of another truck No.HR20-4277
- (ii) Ex.P8: A letter dated 07.01.1994 showing a false sale of truck No.HYW-7417 to one Ram Kishan for a sum of Rs.1.5 lacs, which was male-fide recovered from the custody of Ram Sawroop on 19.07.2022.

7. The trial court did not believe the evidence of the appellant and held that the appellant had failed to prove that the aforesaid documents were forged and fabricated by the accused and recorded the following reasons while acquitting the accused:-

- (i) the appellant could not give any positive explanation for respondent Chhabil Dass having in his possession the blank signed papers having signatures of Radhey Shyam (appellant).
- (ii) No reliance can be made upon the FSL report (Ex.P9) since the expert was not examined as a witness in this regard. Reliance was also placed upon a decision in **Lakha Singh Versus State of Punjab**, 2006 (3) RCR (Criminal) 933 (3). It has not been proved that the respondents have forged the said documents.

8. Assailing the said findings, complainant has filed the present appeal along with an application for seeking leave to appeal.

9. The learned counsel for the appellant submitted that the trial Court has ignored the testimony of Ram Sarup, PW1, the report of the FSL (Ex.P9) and the fact that despite the orders passed by the High Court, the truck which was the case property was not seized by the respondent ASI Ram Sarup. The said statements and the report has been wrongly ignored. The trial Court has also failed to appreciate the fact that as per the orders passed by Sh. B.S. Rawat, ADJ, Hisar, vide judgment dated 05.05.1999, whereby it was held that respondent Chhabil Dass and his four unidentified accomplices had seized the truck along with Brahama Nand along with 259 tins of mustard oil at the gun point and they committed the robbery.

10. We have considered the aforesaid arguments and perused the record. It is evident from the averments made in the criminal complaint filed before the Ilaqua Magistrate, as well as from the judgment dated 27.10.2010 passed by learned Judicial Magistrate Ist Class, Hisar, in FIR No.203 of 27.11.2001 (Ex.P1), that the said FIR No.203 was lodged with the same allegations as made in the present complaint that Brahma Nand got registered another FIR No.64 dated 24.03.1993, regarding robbery of the truck and the tins. The cancellation report was filed by the police. Thereafter, Brahama Nand filed a criminal complaint being dissatisfied by the Criminal Court. A summoning order was passed and respondent Chhabil Dass and others were summoned to face the trial under Section 395 read with Section 397 of the IPC. Ultimately, respondent Chhabil Dass was convicted. During the trial of the said case, complainant Brahama Nand filed an application for seizure of the truck and on the basis of the order passed by the Hon'ble High Court on 06.08.1998, the truck could not be seized. Learned Chief Judicial Magistrate, Hisar, vide order dated

20.11.2001, ordered for lodging of an FIR against the purchaser of the truck and the tins, as such, FIR No.203 of 27.11.2001 was registered. During the trial of the said case, appellant Radhey Shyam was acquitted.

11. The case of the appellant is that during the trial of the said case in FIR No.203 of 27.11.2001 (Ex.P1), the respondents have relied upon two documents which were forged and fabricated i.e. the statement of the appellant regarding delivery of the truck dated 23.03.1993 as well as the letter dated 20.4.1993 (both these letters are part of Ex.P5 [Page-66 to 69]) and a letter dated 07.01.1994 (Ex.P8).

12. The present criminal complaint had been filed mainly on the ground that since the appellant who was an accused in the said FIR No.203 of 27.11.2001, was acquitted vide judgment dated 27.10.2010 (Ex.P1), therefore, it is evident that the said documents Ex.P5 and Ex.P8 are the result of forgery and relying upon the said documents amounts to cheating having been committed by the respondents in connivance with each other.

13. After considering the evidence on record, we are of the considered opinion that merely on the ground that the appellant has been acquitted in a criminal case would not lead to a conclusion that the said case was registered on the basis of the forged documents. It would also not tantamount that the acquittal of the appellant would amount to cheating. Firstly, for the reason that in a criminal case, the prosecution has to prove the case beyond shadows of doubt. The criminal trial is not decided on preponderance of evidence; strict proof is required to hold a person guilty during a criminal trial. Secondly, the trial Court has rightly observed that there is no evidence that the accused have committed the forgery.

14. The learned counsel for the appellant has placed much reliance

upon the report of the FSL (Ex.P9). A perusal of the FSL report shows that there is no clear cut finding given that the said documents are the result of forgery. It is only mentioned that the signatures might have existed prior to the typing of the writings on the said documents. In the absence of a clear cut opinion given in the FSL Report that the said documents were the result of forgery, the trial Court has rightly disbelieved the said reports.

15. Apart from this trial Court has rightly disbelieved the said report being not per se admissible in evidence as the expert was not examined as a witness. It is observed that the FSL report (Ex.P9) has been signed by the Senior Scientist of Forensic Science Laboratory, Madhuban, Karnal. The said report was not *per se* admissible into evidence as having not been signed by one of the officers as mentioned in sub-Section 4 of Section 293 of the Cr.P.C. The said Sections reads as under:

“293. Reports of certain Government scientific experts:-

(1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject- matter of his report.

(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally,

depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely:-

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) the Chief Controller of- Explosives;

(c) the Director of the Finger Print Bureau;

(d) the Director, Haffkeine Institute, Bombay;

(e) the Director, [Deputy Director or Assistant Director] of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) the Serologist to the Government.

(g) any other Government scientific expert specified, by notification, by the Central Government for this purpose.” (emphasis supplied)

16. Only the reports made by Chemical Examiner, Assistant Chemical Examiner, Chief Controller of Explosives, the Director of the Finger Prints Bureau etc. as mentioned in Sub-Section 4 of Section 293 can be used as evidence in the present case. The report of Forensic Science Laboratory was not signed by any of the said officers, hence, it was not *per se* admissible, as such, the learned trial Court has rightly relying upon the decisions of **Lakha Singh Versus State of Punjab**, 2006 (3) RCR (Criminal) 933 held that the said report cannot be said to be *per se* admissible in evidence.

17. We have also observed that as per the judgment Ex.P1 in which the appellant was acquitted in a case under Section 420 of the IPC, the only observations were given that considering the report FSL and the

late production of the said documents shows that possibility of making up of these documents cannot be ruled out. It was further observed that for the sake of arguments even if it is presumed that the truck in question was sold to Chhabil Das (respondent No. 1) by Ram Sarup even then no offence of cheating is made out. No clear cut finding was given by the Criminal Court in the judgment Ex.P1 that the statement of the complainant Ex.P5 and the letter dated 07.01.1994 (Ex.P8) are forged documents. Even no such finding was recorded that the said document was forged by Chhabil Dass and the other respondents. Only it was found that the said documents were produced late and a doubt has been created by way of the report of the FSL, hence, the appellant Radhey Shyam was given the benefit of doubt and he was acquitted.

18. From the aforesaid discussion, we conclude that neither any findings have been recorded in the judgment dated 27.10.2010 (Ex.P1) nor the appellant could prove during the present trial that the said documents Ex.P5 and Ex.P8 are forged and fabricated documents.

19. Since, there is always a presumption of innocence and in case of acquittal, there is double presumption. In this regard, reliance can be placed upon the judgment of the Hon'ble Supreme Court in **para 41 in Dhanapal v. State By Public Prosecutor, Madras, (2009) 10 SCC 401** while dealing with scope of interference at appellate stage has held:

“41.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."

20. The burden lies upon prosecution to prove the guilt beyond reasonable doubt. The learned trial Court has passed a detailed, reasoned speaking judgment and we find no infirmity in it. 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.

21. In view of the above, we are of the considered opinion that dismissal of the criminal complaint by the trial Court is in resonance with the facts of the case and does not warrant any interference.

22. Consequently, we are of the considered opinion that the view which has been taken is a probable view and in the absence of any perversity since all evidence has necessarily been scanned and discussed, no case is

made out for interference in the well reasoned order passed by the trial Court.

Accordingly, the application for grant of leave to appeal is dismissed.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

20th December, 2022

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Whether Speaking	Yes
Whether Reportable	Yes