

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-1194-MA- of 2018 (O&M)
Date of Decision: 27th April, 2022

State of Haryana

Petitioner

Versus

Swarn Singh

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Geeta Sharma, DAG, Haryana.

AVNEESH JHINGAN, J (Oral):

The State of Haryana has filed the present application under Section 378(3) Cr.P.C. seeking leave to appeal against acquittal of Swarn Singh (respondent) in case of FIR No.44 dated 21.10.2015 under Sections 7 and 13 of the Prevention of Corruption Act, 1988, registered at Police Station State Vigilance Bureau, Gurgaon. The application is accompanied by an application for condoning delay of 114 days.

Shorn of unnecessary details, the facts are that complainant-Hasmuddin filed a complaint against the respondent, who was working as Lineman (on contractual basis) in Uttar Haryana Bijli Vitran Nigam Ltd. (for short, 'the Nigam'). The allegations were that the complainant had an electric connection in the name of his wife, which was dis-connected due to non-payment of the dues. The respondent demanded Rs.30,000/-for waiving off the electric consumption bill of previous meter and for installation of a new meter. On the basis of the complaint, a trap was laid and shadow witness was Shahid Khan. The laced currency notes were recovered from a stool in a tea stall where the respondent was present.

The trial court considering the issue as to whether the prosecution was able to prove demand of illegal gratification by the respondent for himself or for any other public servant for waiving the previous bills and installing the new meter held that the onus was not discharged and resultantly the respondent was acquitted.

Learned counsel for the State argues that the trial court erred in acquitting the respondent. In the deposition, the complainant had supported the case of the prosecution stating that bribe of Rs.30,000/- was demanded for clearing the arrears and for installation of the new meter.

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.”

The trial court had commented upon the manner of investigation as no document was recovered from the possession of the respondent or from the office of the Nigam to establish that the complainant had submitted documents for installation of the new meter.

It was considered that the complainant had relied upon an audio recording for which allegedly a compact disc was handed over but the prosecution had not proved the audio recording during trial. There was a contradiction in the contents of the complaint and the oral deposition of the complainant. As per the complaint, the complainant was known to the respondent prior to 21.10.2015 whereas in his deposition he stated that he had never met the respondent prior to 21.10.2015. The complainant had not supported the case of the prosecution as he stated that no file was handed over to the respondent on the day of occurrence. In his cross-examination, the complainant stated that he did not know as to why Rs.30,000/- were demanded by the respondent. He clarified that he was told that the amount was for getting the arrears cleared. As per the evidence adduced, recovery of the laced currency was made from a stool in a tea stall. The prosecution miserably failed to prove the demand or acceptance of illegal gratification.

The matter was considered from another aspect i.e. there was

variation in the story put forth regarding filing of the complaint . PW-11 Inspector Jatinder Kumar in his cross-examination stated that the complaint was submitted to him on 21.10.2015 at 10.00/10.30 AM in front of Titu Tent House, Rajeev Colony, Ballabgarh whereas the endorsement on application (Ex.P11) was of 2.00 PM. The prosecution failed to prove the order of the Deputy Commissioner vide which the Executive Engineering was appointed as a Duty Magistrate.

In the absence of any proof with regard to demand and acceptance of illegal gratification, no case is made out for grant of leave to appeal, more so as there is no factual or legal error in the impugned judgment, the application is dismissed.

Since the application has been decided on merits, the application for condonation of delay is also disposed of.

[AVNEESH JHINGAN]
JUDGE

27th April, 2022
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |