

230 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-1252-MA-2018

Date of Decision: 21st April, 2022

State of Haryana

Petitioner

Versus

Sameer Khan and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Geeta Sharma, Deputy Advocate General, Haryana.

AVNEESH JHINGAN, J (Oral):

1. This is an application seeking leave to appeal against acquittal of the accused by the Additional Sessions Judge, Ambala.

2. The brief facts are that on 8th January, 2017, complainant Yogesh Prjapati filed a complaint alleging that he was going on foot and near Peer Baba on *Katch Rasta*, three boys came from Kala Amb side on motorcycle one of the boy demanded tobacco from him and on refusal the other boy snatched his mobile phone of Samsung make and purse containing Rs. 1500/-. On 9th January, 2017, the Investigating Officer (for short 'IO') ASI Suresh Kumar arrested Sameer Khan from bus stand of Village Dera. The confessional statement of Sameer Khan was recorded, no recovery was made from the accused but he disclosed the name of co-accused Ashok.

3. The trial Court after considering the facts and appreciating the evidence produced noted that complaint was registered against the unknown persons. The incident was around 9 PM, no description of the accused was mentioned by the complainant. There were no details like

International Mobile Equipment Identity of the mobile or the number of snatched currency notes, no test identification parade was conducted by the IO. The story put forth by the prosecution was found to be doubted by Trial Court as the IO had arrested Sameer Khan on 9th January, 2017 (next day) from the bus stand of village Dera and there was no basis to support as to how IO identified Sameer Khan. The IO in his deposition deposed that Sameer Khan was arrested on the identification of the complainant. IO faulted in his cross-examination when he stated that neither identification memo was prepared nor the arrest memo was got signed from the complainant. The documents relied upon by the IO were found unreliable as none of the documents bear the signatures of Sameer Khan.

4. The Court came to the conclusion that the prosecution failed to discharge the onus of connecting the accused with the alleged incident reported by the complainant.

5. Learned State counsel argues that prosecution version was duly supported by the deposition of IO.

6. Heard the counsel at some length and perused the records.

7. The statement of the IO when read as a whole including his answers in cross-examination itself is not enough to prove the case of the prosecution. With so many dents created in the story of the prosecution, the view taken by the trial Court is a plausible and based upon sound record.

8. The Supreme Court in **Allarakhya 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.

9. 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 misreading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.”

10. 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**.

11. 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”

- 12. No case is made out of illegality on facts or law much less perversity.
- 13. Leave to file appeal is declined.

[AVNEESH JHINGAN]
JUDGE

21st April, 2022
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |