

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-2262-MA of 2016 (O&M)

Date of Decision: 24th November, 2022

State of Haryana

Applicant

Versus

Satish Kumar Patwari

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Gurmeet Singh, AAG, Haryana for the applicant
Mr. Shiv Kumar Sharma, Advocate for the respondent.

AVNEESH JHINGAN, J (Oral):

1. This is an application for grant of leave to appeal against the judgment acquitting Satish Kumar Patwari (respondent) in FIR No.32 dated 26.11.2014, under Sections 7 and 13 of the Prevention of Corruption Act, 1988 (for short, 'the Act') registered at State Vigilance Bureau Rohtak, unit at Karnal. The application is accompanied by an application for condonation of delay of 111 days in filing thereof.

2. The brief facts as set up by the prosecution are that Pratap Singh moved a complaint to the Vigilance Bureau. He stated that he handed over a sale deed to the respondent for entering the mutation in the name of Rekha Rani. It was alleged that when he went to enquire, Parvesh, Assistant of the respondent took Rs.1,000/- and told him that he will have a talk with the respondent and convey as to how much amount is to be paid. On 26.11.2014, the respondent accepted Rs.1,000/- and demanded Rs.8,000/- more. On complaint, a trap was laid and the respondent was caught red handed. On receiving sanction, charges were framed.

3. The prosecution to support its case examined seventeen witnesses. The complainant had supported the case of prosecution in his statement under Section 164 Cr.P.C.

4. The respondent in his statement under Section 313 Cr.P.C. pleaded false implication, denied that he had made any demand. It was further stated that husband of Rekha Rani was inimical towards him as he wanted undue favour of changing khasra girdawari of the land owned by his father and the respondent had not obliged him.

5. The trial court considering:

- (i) sanctioning authority without application of mind granted sanction to prosecute, reliance was placed upon the testimony of PW5-Suresh Kumar Kanungo who stated that material collected against respondent was not sent to Deputy Commissioner, Karnal for grant of sanction;
- (ii) that the complainant had recorded the conversation regarding bribe in his mobile but had not joined investigation and the recording was not taken from him;
- (iii) the complainant did not support the case of prosecution and was declared hostile;
- (iv) shadow witness PW13-Ashok Kumar deposed that he was not in a position to hear the conversation between the complainant and the respondent; and
- (v) Rekha Rani had not filed any application for entering the mutation in her favour

acquitted the respondent vide judgment dated 17.5.2016.

6. Learned counsel for the State submits that the trial court erred in acquitting the respondent. The Investigating Officer and the official witnesses supported the case of the prosecution.

7. Mr. Shiv Kumar Sharma, Advocate appears for the respondent and defends the impugned judgement.

8. Heard learned counsel for the parties and perused the record.

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

10. 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 reappreciate, 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.”

11. 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.”

12. It is not in dispute that none of the official witnesses were witness to the demand made by the respondent. The complainant had not supported the case of the prosecution. The shadow witness specifically stated that he had not heard the conversation between the complainant and the respondent. The prosecution failed to prove the demand of bribe.

13. No case is made out for factual or legal error, much less

perversity in the impugned judgment. The view taken by the trial court is plausible one.

14. The application for grant of leave to appeal is dismissed. Consequently, the application for condonation of delay is also dismissed.

[AVNEESH JHINGAN]
JUDGE

24th November, 2022

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