IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1813-MA-2014
Date of Decision: 22nd July, 2022

State of Haryana

... Applicant

Versus

Ramji Lal and others ... Respondents

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Ms. Geeta Sharma, DAG, Haryana.
Mr. Devender Kumar, Advocate for the respondents.

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AVNEESH JHINGAN , J.(Oral)

CRM-35780-2014

This is an application for condonation of delay of 147 days in filing the application/appeal.

For the reasons recorded in the application, the same is allowed and delay of 147 days in filing the application/appeal is condoned.

CRM-A-1813-MA-2014

This application under Section 378(4) Cr. P.C. is filed seeking leave to Appeal against the judgment of acquittal dated 28.1.2014 passed by Additional Sessions Judge, Palwal.

As per the allegations, on 7.5.2007, Ved Parkash-complainant paid bribe of Rs. 60,000/- to Rajender Verma, Tehsildar, Hathin (hereinafter referred to as 'the Tehsildar') for registration of sale deed. On a request to reduce the amount, the complainant was assured that the amount would be adjusted while registering the other sale deed.

On 5.6.2007, the complainant approached the Tehsildar for executing another sale deed and requested to adjust the amount already paid.

The Tehsildar stated that 1% is to be paid on registration of each sale deed. Babu Lal-clerk stated that Rs. 5,000/- and Rs. 200/- is to be paid for registration fee and computer fee respectively and Rs. 5,500/-, Rs. 2,000/-, Rs. 100/- and Rs. 500/- would be received by Tehsildar, Babu Lal, Ramji Lal and Jal Ram respectively. On complaint received by the State Vigilance Bureau, a trap was laid. Satbir Singh Maan, HCS, City Magistrate, Mewat was appointed as Duty Magistrate and ASI Surender Singh as a shadow witness. After being initialed and laced with Phenolphthalein powder currency notes to the tune of Rs. 13,300/- were given to the complainant for paying money to the accused. Babu Lal, Ramji Lal and Jal Ram were apprehended at the spot. On apprehension, Babu Lal confirmed that Rs. 5,000/- was received as a registration fee, receipt was issued and he had passed Rs. 2,000/- of bribe money through window to Jitender-Stamp Vendor. Jitender was apprehended, he informed that Babu Lal had given him Rs. 2,000/-, Rs. 2,500/- and Rs. 1,000/- at different points of time. He handed over the collected amount to his brother Rakesh. On phone he asked his father to bring the amount from Rakesh. Jitender was made to undergo hand wash test and the solution turned pink. Uday Pal-father of Jitender came along with one polythene bag containing Rs. 4,600/-. Three notes of denomination of Rs. 500/- were found to be initialed.

From Ramji Lal, Rs. 300/- were recovered. He had already issued receipt of Rs. 200/- and a currency note of Rs. 100/- was produced by him by picking it from the drawer of the table. Rupees five hundred was got recovered by Jal Ram from Godrej Almirah. On dipping of the currency notes into the solution, the colour of the solution turned pink.

The trial could not progress against the Tehsildar as sanction to prosecute under Section 19 of Prevention of Corruption Act, 1988 was denied.

The case of the prosecution was found doubtful. As per the allegations, on 7.5.2007, after receiving illegal gratification the Tehsildar had registered a sale deed in favour of the complainant. No evidence was adduced to show that the payment of Rs. 60,000/- made to the Tehsildar. No record was produced for execution of registered sale deed in favour of the complainant on 7.5.2007. It is an undisputed fact that on 6.6.2007 when the trap was laid, the Tehsildar was on leave. Complainant did not support the case of the prosecution. He stated that out of Rs. 13,300/-, Rs. 200/- was given to Computer Clerk and Rs. 5,000/- to Registration Clerk, they issued receipts of payments received. Thereafter, the Vigilance team took balance amount from him, he was made to sit there stating that the rest of the work will be done by them. He further stated that the Vigilance officials received his signatures on the blank papers. During the cross-examination, the complainant stated that he did not have any conversation with Babu Lal and Ramji Lal either on 6.6.2007 or earlier to that and no extra amount was paid by him to the accused. The complainant was declared hostile.

PW-14/ASI Surender Singh stated that Babu Lal handed over the currency notes to the Stamp Vendor through office window, whereas, as per the site plan, seat of Stamp Vendor was not shown near window. The prosecution failed to prove that Babu Lal had passed the laced currency notes to Jitender. The case against Stamp Vendor-Jitender was not made out as neither the stamp vendor's licence was produced nor was there any evidence that he demanded money for getting the sale deed registered.

Moreover, out of Rs. 4,600/- produced by the father of Jitender, currency notes of only Rs. 2,100/- were taken in possession and currency notes worth Rs. 1,500/- were found to be initialed by the member of the raiding party.

Jal Ram was a peon in the office. He was not connected with registration of the sale deed and complainant specifically stated that Jal Ram did not demand any amount from him. Jal Ram was a specially-abled person by his left hand and on washing his right hand with solution of Sodium Carbonate, there was no change in colour.

On failure of the prosecution to prove the guilt, the accused were acquitted.

The State Counsel submits that the Trial Court erred in acquitting the accused. There was recovery of the laced amount from father of Stamp Vendor-Jitender as well as from the drawer of the table of Ramji Lal.

Learned counsel for the respondents defends the impugned judgment of acquittal.

The Supreme Court in ***Criminal Appeal No. 261 of 2022 K. Shanthamma v. The State of Telangana,*** decided on 21.2.2022 held :

> *"7.We have given careful consideration to the submissions. We have perused the depositions of the prosecution witnesses. The offence under Section 7 of the PC Act relating to public servants taking bribe requires a demand of illegal gratification and the acceptance thereof. The proof of demand of bribe by a public servant and its acceptance by him is sine quo non for establishing the offence under Section 7 of the PC Act. In the case of P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and another (2015) 10 SCC 152, this Court has summarised the well-settled law on the subject in paragraph 23 which reads thus:*

> *"23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. <u>As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder."</u>*
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> (Emphasis supplied)

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 prosecution failed to prove the demand and acceptance of illegal gratification by the accused. The prosecution witnesses specifically stated that no demand was made by Ramji Lal, Jal Ram and Babu Lal. The Trial Court considered the evidence threadbare and acquitted respondents by noting :-

(i) No evidence was adduced to establish payment of Rs. 60,000/- to the Tehsildar on 7.5.2007. Even the execution of registered sale deed on the said date was not substantiated.

(ii) On 6.6.2007, a trap was laid but the Tehsildar was on leave.

(iii) The sanction to prosecute the Tehsildar was not granted.

(iv) The raiding team while handing over the currency notes worth Rs. 13,300/- to the complainant for giving it to the accused, made no separation of notes viz-a-viz the Government fee to be paid and of bribe money.

(v) The Registration Clerk and Computer Clerk had issued receipts of Rs. 5,000/- and Rs. 200/- respectively for the amount allegedly given by the complainant.

(vi) The complainant deposed that he had paid Rs. 5,200/- to the Registration Clerk and the Computer Clerk, the balance laced currency notes were collected by the Vigilance officials. He was asked to sit as the rest of the work was to be done by them.

(vii) As per the statement of the complainant, Vigilance Officials got his signatures on blank papers.

(viii) Demand of the illegal gratification was not proved as the complainant deposed that Jal Ram, Ramji Lal and Babu Lal never demanded money from him

(ix) The prosecution witness-Surender Gupta deposed that no money was demanded by the staff from the complainant.

(x) The prosecution failed to show that Jitender was a Government official, his licence of stamp vendor was not proved. There was no evidence that he demanded money for registration of the sale deed.

(xi) That there was delay in registering the FIR.

No case is made out for grant of leave to appeal as no legal or factual error, much less perversity, has been pointed out in the impugned judgment. The conclusion arrived at by the trial court is plausible.

The application is dismissed.

(AVNEESH JHINGAN)
JUDGE

22nd July, 2022
anuradha

Whether reasoned/speaking	Yes
Whether reportable	Yes