**239** **IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**

**CRM-A-629-MA-2015**
**Date of Decision: 25th April, 2022**

State of Haryana

Applicant/appellant

Versus

Bahadur Singh

Respondent

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

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

Mr. Amit Dhawan, Advocate for the respondent.

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**AVNEESH JHINGAN, J (Oral):**

1. This is an application under Section 378(3) Cr.P.C. filed for grant of leave against the judgment of acquittal of Bahadur Singh (respondent) in case of FIR No. 111, dated 28th April, 2011, under Sections 8, 9, 12 of the Prevention of Corruption Act, 1988 and 120-B of Indian Penal Code, 1860.

2. The brief facts are that on 28th April, 2011 Inspector Satpal Singh along with other officials acted upon a secret information, checked a truck bearing registration No. HR-63-0373. On checking 950 boxes of liquor and beer being transported from Chandigarh to Uttar Pradesh and Uttaranchal were recovered. The truck driver-Satbir Singh and co-accused Sukhwinder Singh were apprehended on the spot. Thereafter FIR No. 110, dated 28th April, 2011, under Sections 420, 467, 468, 471, 120-B IPC and Section 61 of Excise Act,1914 was registered.

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3. Learned State counsel argues that as per the case set up, respondent impersonated himself as Sohan Singh (owner of the truck). It was at his instance that the bribe was offered by Sukhwinder Singh for release of truck, the trial Court erred in acquitting the respondent.

4. Learned counsel for the respondent submits that the issue determined by the trial Court was:- whether Bahadur Singh along with co-accused Sukhwinder Singh tried to pay bribe to SHO for release of the truck loaded with boxes of liquor?

5. The contention is that the prosecution miserably failed to show any connection between the seized truck and the respondent. To buttressed the contention submission is that the respondent could not have been nominated under Section 8 of Prevention of Corruption Act, 1988 read with under Section 120-B IPC as there was no foundation to allege that the respondent or at his instance, undue advantage was sought from the SHO for release of the truck.

6. As per the allegations, Sukhwinder Singh offered a bribe of Rs.1,80,000/- to Inspector for the release of the truck. During the investigation of the FIR, the respondent Bahadur Singh was arrested after two months of registration of FIR, he got recovered the Registration Certificate (for short 'RC') and the other documents pertaining to the truck. Allegations were that respondent impersonated as (Sohan Singh) owner of the truck for getting the truck released after making payment of the penalty. FIR No. 111, dated 28th April, 2011, under Sections 8, 9 and 12 of the Prevention of Corruption Act, 1988 and 120-B IPC was registered.

7. During the investigation, it was revealed that truck was sold by

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Sohan Singh who had further sold it to Nirmal Singh but in fact the registration continued in the name of Sohan Singh. Accused Sukhwinder Singh who had offered the bribe in the present FIR, was declared proclaimed offender. The original file of FIR No. 110, dated 28th April, 2011 was summoned by trial Court and it was found that Sohan Singh had applied for release of truck through his General Power of Attorney- Raj Khan. The respondent was proceeded with the aid of Section 120-B IPC.

8. Considering the facts and appreciating the evidence, trial Court noted that the bribe was offered by Sukhwinder Singh, the recovery of the RC and other documents by the police was done without joining any independent witness. No evidence was produced to relate Bahadur Singh with the truck. The car allegedly from which the RC of the truck and other documents were recovered, neither was made the case property nor the RC of the car was produced and the police official deposed that he does not remember the detail or description of the car. No specimen signatures of the respondent were obtained to support the allegation that he furnished two affidavits and deposited the penalty for release of the truck. DSP Vinod Kumar who deposed as PW-8 had not conducted any investigation, he had only taken in the possession the documents recovered. The Court concluded that in absence of any link of the respondent with the truck, it cannot be held that illegal gratification was offered on his instance, the respondent was acquitted.

9. 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

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be adopted by the Court.

10. 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."*

11. 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.**

12. 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*

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> *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."*

13. Learned counsel for the State has failed to show any factual or legal error much less perversity in the impugned order. The trial Court has given sound reasons and dealt in detail with evidence produced to conclude that there was nothing on record to establish that the respondent was owner of the truck or at his instance the bribe was offered.

14. In view of the law laid down, no case is made out for grant of

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leave to appeal.

15. Dismissed.

**[AVNEESH JHINGAN]**
**JUDGE**

**25th April, 2022**
Parveen Sharma

1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes

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