

CRM-A-983-MA-2015

[1]

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-983-MA-2015

Date of Decision: 7th December, 2022

State of Haryana

Applicant

Versus

Mukesh Kumar

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Gurmeet Singh, AAG, Haryana.
Mr. Sourabh Sharma, Advocate for the respondent.

AVNEESH JHINGAN, J (Oral):

1. This is an application for grant of leave to appeal against the judgment acquitting Mukesh Kumar (respondent) in FIR No. 28 dated 9.9.2013, under Sections 8 and 13 of the Prevention of Corruption Act, 1988 (for short, 'the Act') registered at Police Station, State Vigilance Bureau, Rohtak.

2. The case as set up by the prosecution is that Jaswant Singh moved an application alleging that for his five trucks, he was paying Rs.65,000/- as entry fee to the respondent for Regional Transport Authority (RTA), Narnaul and to Sushil Sarwan for RTA Rewari as well as Jhajjar. He requested Sushil Sarwan to give concession on the entry fee, who after talking on phone to the respondent refused the concession, rather the complainant was told that his trucks would be allowed to pass only on payment of Rs.65,000/- per month. On the complaint trap was laid, Sankalp,

Naib Tehsildar, Jhajjar and his Reader Randhir Singh were made official witness and shadow witness. Sixty five currency notes of the denomination of Rs.1000/- each were laced with Phenolphthalein Powder and initialled. The shadow witness and the complainant were sent to the scheduled place at Rewari for handing over the bribe to the respondent. On signal from the shadow witness the respondent was apprehended and the laced currency was recovered from his left hand. On washing of his hands and of the complainant, colour of the solution turned pink.

3. The prosecution to support its case examined eleven witnesses.
4. In statement under Section 313 Cr.P.C., it was stated that it is a case of false implication.
5. In his defence, the respondent examined one witness.
6. The trial court considering that the prosecution failed to prove the case, acquitted the respondent vide judgment dated 23.1.2015.
7. Learned counsel for the State submits that the trial court erred in acquitting the respondent. He further submits that tainted currency was recovered from the respondent.
8. Heard learned counsel for the parties and perused the record.
9. The scope of interference in case of acquittal is well settled.

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.”

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."

10. To prove the demand, the prosecution examined complainant-Jaswant Singh-PW4 and shadow witness Randhir Singh-PW2. The complainant was declared hostile. In his deposition, he stated that he had called the respondent telephonically and gave him Rs.65,000/-. In his testimony, he had not stated that Rs.65,000/- were handed to the respondent on his demand. The shadow witness in his cross-examination admitted that the complainant had handed over the money to the respondent directly and no conversation took place between them. Investigating Officer PW11-Sajjan Kumar in his cross-examination stated that he investigated about the registered consumers of the mobile numbers mentioned in the complaint but he was not remembering that in whose names the SIM cards were issued. PW7-Head Constable Sanjay tendered in evidence the call details and mentioned the persons in whose name the mobile numbers were registered but there was no proof that mobiles were used by them. The Investigating Officer further admitted in his cross-examination that he had not verified the fact that the complainant was owning five trucks.

11. The trial court considering the evidence threadbare rightly concluded that the prosecution failed to prove demand and acceptance of illegal gratification and acquitted the respondent. The conclusion arrived at by the trial court is a plausible one. No case is made out for factual or legal

error much less perversity. The application for grant of leave to appeal is dismissed.

[AVNEESH JHINGAN]
JUDGE

7th December, 2022
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1. Whether speaking/ reasoned
- :
- Yes / No
2. Whether reportable
- :
- Yes / No