

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-143 of 2021 (O&M)
DECIDED ON:15th November, 2022

State of Haryana

.....APPLICANT

VERSUS

Shyam Lal

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Gurmeet Singh, AAG Haryana.

AVNEESH JHINGAN, J (ORAL)

1. This is an application for grant of leave to appeal against the judgment acquitting Shyam Lal (respondent) in FIR No.36 dated 4.9.2013, under Section 7 of the Prevention of Corruption Act, 1988 (for short 'the Act') registered at Police Station SVB Hisar. The application is accompanied by an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 142 days in filing the appeal.

2. The brief facts are that a complaint was made in the month of December, 2012 by Kulbhushan, Proprietor of Agnihotri Infrastructure Company, Ding Road, Sirsa (for short "the Concern"). The Concern was awarded a contract for construction of International Girls Hostel in Chaudhary Charan Singh Haryana Agricultural University (for short "the University"). The work was to be completed within one year, the time was extended by six months but the work was not completed. The cheque for doing the half work was issued. The work was left in between, the articles i.e. doors and windows, lying at the spot were taken by the Concern without

permission of the University. FIR No. 744 dated 25.10.2012 regarding theft was registered against the Concern. For completion of the work, the contract was awarded to M/s Sukhdev Singh and Company, Hisar. It was alleged that on 19.5.2012, complainant made a telephonic call to the respondent for payment of the balance amount and the respondent demanded bribe money of Rs.12,100/- for passing the bills. The conversation was recorded. On completion of investigation, report under Section 173 Cr.P.C. was filed and charges framed. The prosecution to prove its case examined twenty-one prosecution witnesses. The respondent in 313 Cr.P.C. statement pleaded false implication. To support his defence he tendered Ex.DA and DB.

3. The trial Court after considering the facts and appreciating evidence concluded that prosecution failed to prove that respondent made an attempt to obtain illegal gratification for passing the bills of the complainant and acquitted the respondent vide judgment dated 6.8.2019.

4. Learned State counsel submits that the trial Court erred in acquitting the respondent, the complainant and his brother had supported the case of prosecution.

5. The scope of interference in judgment of acquittal is well settled.

6. 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 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."

7. 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."

The allegation against the respondent was that he demanded

Rs.12,100/- as illegal gratification being 2% commission of the bill amount. As per the complainant 8% commission had already been paid. The complainant relied upon conversation recorded on mobile phone but the mobile was never produced. The complainant himself converted recording in mobile into a CD and was sent to FSL Madhuban for comparison. There was no certification under Section 65-B of the Evidence Act. Deposition of PW9- Rajesh Soni, Deputy Director, FSL Madhuban did not enhance the case of the prosecution. As per his deposition, there was no clear audible voice with regard to the demand of bribe made by the respondent. It was stated that it cannot be said that whether CD contains voice of respondent or not and the possibility of doctoring the CD while conversion cannot be ruled out.

9. The complainant and his brother appeared as prosecution witnesses and stated that they had not made any complaint for 8% commission paid by them for clearance of bills. There was back drop to the complaint i.e. the FIR was got registered by the University against the Concern. It would not be out of place to mention that vide order dated 4.5.2013 a complaint made under Sections 500 and 120-B IPC by the Concern against Abhey Ram Saini, Executive Engineer, P.K. Juneja, SDE, J.S. Lamba, J.E. and Satbir Singh, Chief Security Officer, regarding the allegations of demand and receipt of commission for passing the bills was dismissed by the Court.

10. There is no factual or legal error, much less perversity, in the impugned judgment. The view taken by the trial Court is plausible one. No case is made out for interference in the judgment of acquittal.

11. The application for grant of leave to appeal is dismissed.
12. Since the application for grant of leave to appeal has been considered on merits and dismissed, consequently, application for condonation of delay is disposed of accordingly.

15th November, 2022

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Whether speaking/reasoned Yes

Whether reportable Yes

(AVNEESH JHINGAN)
JUDGE