

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

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**CRA-AS-60-2022(O&M)
Date of decision: 27.04.2022**

AJIT SINGH

....Petitioner(s)

Versus

TARSEM SINGH AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Vijay Rana, Advocate for
Mr. Abhishek Arora, Advocate
for the applicant/appellant.

VINOD S. BHARDWAJ. J. (ORAL)

The present appeal raises a challenge to the judgment dated 06.05.2015 passed by the Court of Judicial Magistrate First Class, Dera Bassi, whereby the complaint No.40 of 17.12.2009/22.12.2014 instituted for offences under Sections 463, 465, 468, 471 and 120-B of the Indian Penal Code, 1860 was found to be without merit. No ground for framing of charge could be established by the appellant. The respondent-accused were accordingly discharged.

2. Before advertng to the merits of the instant case, a brief reference to the facts of the case as borne out from the record are as under:-

- i. That the complainant instituted a present complaint on an allegation that the village namely Rampur Sainian falls within the periphery control area and is covered under the notification of the Punjab Capital Periphery Control Act, 1952. It is alleged that an order was passed by the High Court in CWP No.16325 of 1997 to the effect that there shall be no registration of

a sale deed for any small piece of land less than 1000 square meters. It is alleged that the Joint Sub-Registrar, Dera Bassi was in knowledge of the said order passed by the High Court as well as statutory provisions. It is contended that respondent-accused No.1 Tarsem Singh negotiated sale of land with respondent Nos.2 and 3 namely Banarsi Dass and Ram Sarup sons of Sunder Singh. By virtue of the said agreement, accused Tarsem had agreed to purchase land measuring 4 biswas from co-accused Banarsi Dass and Ram Sarup. It is contended that the sale deed in question could not be executed in view of the order passed by the High Court in CWP No.16325 of 1997. Thereafter, the respondent-accused No.1-Tarsem Singh, in connivance with his brother respondent-accused No.4/Rakesh Kumar and his father got registered the sale deed for an area measuring 1 bigha 5 biswa which also included 1 bigha and 1 biswa of land previously claimed to be owned by his father Rati Ram. It is alleged that no such land holding was owned by Rati Ram and the sale deed dated 02.12.1999 bearing registration No.3812 was executed in a fraudulent manner and to circumvent the operation of the judgment passed by this Court. It is also contended that a separate consideration with respect to the land did not flow from Tarsem Singh to Rati Ram and that even the jamabandi pertaining to title of Rati Ram was not appended along with the sale deed but an old jamabandi was attached with it. It is also pointed out that when the matter in question was brought to the knowledge of the authorities, a corrected sale deed was registered thereafter. The complainant further alleged that on sale deed included 4 biswas of land which was in fact the passage that had been left from the private land by the father of the complainant. Mutation No.1416 reflecting sale of land was thereafter wrongly sanctioned and upon a

challenge, the order of mutation was set aside and the matter was remanded to the Assistant Collector 2nd Grade. It is thus alleged that the sale deed was an outcome of a forgery and creation of a false documentary evidence by the accused and in conspiracy amongst the respondents-accused.

- ii. Upon summoning of the respondent-accused persons, pre-charge evidence was led by the appellant-complainant and he stepped into the witness-box himself as CW-1. The following documents were tendered by the appellant/complainant in his testimony

Copy of letter	Mark-A
Copy of order of SDM dated 26.03.2007	Ex. C2
Copy of order of D.C. Dated 19.02.2008	Mark D
Copy of order of Commissioner, Patiala	Mark E
Copy of jamabandis	Mark F- Mark G
Copy of order of FCR	Mark H
Complaint given by him to SSP	Ex. C3
Applications given by him to FCR	Ex.C3 and Ex.C4
Copy of sale deed	Mark-I
Copy of writ petition	Mark-J
Site Plan	Ex. C5
Copy of power of attorney	Ex.C6
Copy of sale deed dated 02.12.1999	Ex.C7
Jamabandi for the year 1996-97	Ex.C8
Jamabandi for the year 2001-2002	Ex.C9
Copy of the plaint of civil suit	Ex.CX
Jamabadi for the year 2011-2012	Ex.CX1

- iii. Further, Satnam Singh, Patwari appeared as CW-2 and tendered following

documents in his evidence:

Certified copy of jamabandi for the year 1996-97	Ex.CW2/A
Jamabandis	Ex.C8 and Ex.C9

- iv. CW-3/Shashi Kiran, Record keeper, GMADA, Mohali appeared before the Court and proved the carbon copy of letter dated 09.12.2007 as CW3/A. No other evidence was examined. Thereafter, the complainant closed his evidence after tendering documents Ex. CX2 to CX4.
- v. Upon consideration of the rival submissions by the respective parties, the trial Court came to a conclusion that there was insufficient material to support framing of any charge against the respondent-accused persons and accordingly discharged the respondents-accused vide judgment dated 06.05.2015. Aggrieved thereof, the present appeal has been filed.
3. Learned counsel appearing on behalf of the appellant has vehemently argued that the learned Court has failed to appreciate the abundant material available on record which clearly showed that the act of the respondents was in contravention of the order passed by the High Court and that they had actually given incorrect particulars in the sale deed that the same was registered with an object to defeat the operation of the order. The registration of the sale deed was thus clearly in conflict with the mandate of Capital of Punjab (Periphery) Control Act, 1952. It is further alleged that the requisite documents in support of the ownership of Rati Ram had not been appended at the time of registration of the sale deed by the Joint Sub-Registrar. He contends that the sellers were thus not the owners of the khasra numbers mentioned in the sale deed and the passage that was being used by the appellant-complainant had also been sold fraudulently in favour of the respondent-accused persons without any authority.

4. I have heard learned counsel for the appellant-complainant and have gone through the impugned judgment appended along with the appeal.

5. It is evident from a perusal of the same that it was incumbent upon the appellant-complainant to establish and prove that the sale deed in favour of respondent was executed in contravention of any order passed by the High Court or that the area of Rati Ram was wrongly included despite Rati Ram not being owner of any land and that the private passage owned by the appellant-complainant was also fraudulently sold through the said sale deed.

6. Insofar as the question of ownership of Rati Ram is concerned, it is specifically contended by the appellant-complainant himself that an area purportedly shown to be belonging to Rati Ram measuring 1 bigha 1 biswas was wrongly included in the impugned sale deed. He further submits that when the said aspect was brought to the notice of the higher authorities, correction in this regard was duly carried out and a supplementary document in this regard was executed. The appellant-complainant, when confronted with the said aspect, replied that he was not aware as to whether the supplementary sale deed had been executed for correction of khasra number of the property that had been sold by Rati Ram in the original sale deed or not. The burden to prove the said charge lay upon the appellant-complainant to prove that the sale deed was executed with regard to a property that was not under the ownership of the alleged executant. Even otherwise, in the event of mentioning of a wrong number in a sale deed, the grievance if any, lay only with the person whose property is referred to in the said document. It is needless to mention that even despite erroneous mentioning of number does not amount to cause of any loss of any notice to the petitioner as title in the property cannot be transferred by mere mentioning of the numbers. Rati Ram has never raised a challenge to the same and sufficiency of consideration

is not for appellant to determine considering that Rati Ram is father of respondent-accused. The defect, if any, of mentioning wrong khasra numbers in the sale deed thus does not exist any further. The error being technical in nature and the rectification already having been carried out, no criminal offence can be said to have been committed.

7. It was also noticed by the learned trial Court that the appellant-complainant has failed to establish inclusion of any area that was not under the ownership of the vendors in the sale deed which is final and is uncontroverted.

8. Insofar as the allegations and arguments of the appellant-complainant with respect to the sale of the private passage carved out by his father is concerned, the said passage is alleged to have been carved out in Khasra No.1071/662/12/1(0/1). It was noticed by the trial Court that the appellant-complainant acknowledged in his cross-examination that the said khasra number is not mentioned in the sale deed under challenge. As a matter of fact, the sale deed related to Khasra No.1070/662/12. As the Khasra number of the private passage was 1071, hence, the land in question is a distinct and separate parcel of land. It was thus held by the trial Court that the appellant-complainant failed to establish that any part of the private passage belonging to the appellant-complainant was sold by the respondents.

9. It is thus evident that no part of the land owned by the appellant-complainant was sold vide the sale deed laying the foundation of the present case. None of the vendors has raised any challenge thereto. It would thus seriously impinge on the locus of the appellant-complainant to institute the private complaint especially when the vendors have not raised any challenge to the same. Besides, it was also noticed by the trial Court that the sale deed in question was executed on 02.12.1999 and the proceedings were initiated thereafter by the

complainant and a report was submitted by the Tehsildar to the SDM on 07.10.2005. The complaint in question was filed on 17.12.2009 i.e., after a delay of nearly a decade since the execution of the sale deed. There is no valid reason assigned as to why the appellant-complainant remained silent for a period of more than 10 years despite being aware of the execution of the sale deed.

10. The appellant has also not proved before the Magistrate that the sale deed was in violation of any notification or as to how the operation of the order passed by the High Court in CWP No.16325 of 1997 was violated. No notification in this regard has been proved on record. Resultantly, even the said aspect remains unestablished.

11. Learned counsel has also not been able to point out any illegality, perversity or impropriety in the judgment passed by the Court below. He has also not been able to assert or establish that the judgment in question suffers from misappreciation of the evidence adduced on record or that the conclusion so drawn by the Judicial Magistrate First Class was not sustainable on objective assessment and analysis of the evidence adduced before it.

12. While sitting as a Court of appeal against a judgment of acquittal, the Hon'ble Supreme Court has laid down various parameters/guidelines for an Appellate Court to take into consideration before upsetting or interfering in such judgment of acquittal. The relevant precedent judgments are referred to hereinbelow:

LEGAL POSITION IN APPEAL AGAINST ACQUITTAL

13. The Hon'ble Supreme Court has held in the matter of ***M. G. Aggarwal versus State of Maharashtra, AIR 1963 SC 200***, the relevant part is extracted as under:

“(16) Section 423(1) prescribes the powers of the appellate

Court in disposing of appeals preferred before it and clauses (a) and (b) deal with appeals against acquittals and appeals against convictions respectively. There is no doubt that the power conferred by clause (a) which deals with an appeal against an order of acquittal is as wide as the power conferred by clause (b) which deals with an appeal against an order of conviction, and so, it is obvious that the High Court's powers in dealing with criminal appeals are equally wide whether the appeal in question is one against acquittal or against conviction. That is one aspect of the question. The other aspect of the question centres round the approach which the High Court adopts in dealing with appeals against orders of acquittal. In dealing with such appeals, the High Court ;naturally bears in mind the presumption of innocence in favour of an accused person and cannot lose sight of the fact that the said presumption is strengthened by the order of acquittal passed in his favour by the trial Court and so, the fact that the accused person is entitled to the benefit of a reasonable doubt will always be present in the mind of the High Court when it deals with the merits of the case. As an appellate Court the High Court is generally slow in disturbing the finding of fact recorded by the trial Court, particularly when the said finding is based on an appreciation of oral evidence because the trial Court has the advantage of watching the demeanour of the witnesses who have given evidence. Thus, though the powers of the High Court in dealing with an appeal against acquittal are as wide as those which it has in dealing with an appeal against conviction, in-dealing with the former class of appeals, its approach is governed by the overriding consideration flowing from the presumption of innocence. Sometimes, the width- of the power is emphasized, while on other occasions, the necessity to adopt a cautious approach in dealing with appeals against acquittals is emphasised, and the emphasis is expressed in different words or phrases used from

time to time. But the true legal position is that however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused. this position has been clarified by the Privy Council in Sheo Swarup v. The King Emperor and Nur Mohammad v. Emperor AIR 1945 PC 151.

(17) Some of the earlier decisions of this Court, however, in emphasizing the importance of adopting a cautious approach in dealing with appeals against acquittals, it was observed that the presumption of innocence is reinforced by the order of acquittal and so, "the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons": vide Surajpal Singh V. The State Similarly in Ajmer Singh V. State of Punjab, it was observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are "very substantial and compelling reasons to do so.") In some other decisions, it has been stated that an order of acquittal can be reversed only for "good and sufficiently cogent reasons" or for "strong reasons". In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended- to introduce an additional condition in clause (a) of Section 423 (1) of the Code. All that the said observations are intended to emphasise is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in the case of Sheo Swarup, the presumption of innocence in favour of the accused "is not certainly weakened by the fact that he has been acquitted at his

trial." Therefore, the test suggested by the expression "substantial and compelling reasons" should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in Sanwat Singh v. State of Rajasthan and Harbans Singh v. The State of Punjab; and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse. Therefore, the question which we have to ask ourselves in the present appeals is whether on the material produced by the prosecution, the High Court was justified in reaching the conclusion that the prosecution case against the appellants had been proved beyond a reason-able doubt, and that the contrary view taken by the trial Court was, erroneous. In answering this question, we would, no doubt, consider the salient and broad features of the evidence in order to appreciate the grievance made by the appellants against the conclusions of the High Court. But under Article 136 we would ordinarily be reluctant to interfere with the finding of fact recorded by the High Court particularly where the said findings are based on appreciation of oral evidence.

14. Further, the Hon'ble Supreme Court has held in the matter of ***Nagbhushan vs. State of Karnataka, (2021) 5 SCC 212***, as under:

"7.2 Before considering the appeal on merits, the law on the appeal against acquittal and the scope and ambit of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal is required to be considered.

7.2.1 In the case of Babu v. State of Kerala (2010) 9 SCC 189, this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C. In paragraphs 12 to 19, it is observed and held as under:

12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court.

The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P (1975) 3 SCC 219, Shambhoo Missir v. State of Bihar (1990) 4 SCC 17, Shailendra Pratap v. State of U.P (2003) 1 SCC 761, Narendra Singh v. State of M.P (2004) 10 SCC 699, Budh Singh v. State of U.P (2006) 9 SCC 731, State of U.P. v. Ram Veer Singh (2007) 13 SCC 102, S. Rama v. S.Rami Reddy (2008) 5 SCC 535, Aruvelu v. State (2009) 10 SCC 206, Perla Somasekhara Reddy v. State of A.P. (2009) 16 SCC 98 and Ram Singh v. State of H.P. (2010) 2 SCC 445)

13. In Sheo Swarup v. King Emperor AIR 1934 PC 227, the Privy Council observed as under: (IA p. 404) "... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing

the witnesses.”

14. The aforesaid principle of law has consistently been followed by this Court. (See Tulsiram Kanu v. State AIR 1954 SC 1, Balbir Singh v. State of Punjab AIR 1957 SC 216, M.G. Agarwal v. State of Maharashtra AIR 1963 SC 200, Khedu Mohton v. State of Bihar (1970) 2 SCC 450, Sambasivan v. State of Kerala (1998) 5 SCC 412, Bhagwan Singh v. State of M.P.(2002) 4 SCC 85 and State of Goa v. Sanjay Thakran (2007) 3 SCC 755)

15. In Chandrappa v. State of Karnataka (2007) 4 SCC 415, this Court reiterated the legal position as under: (SCC p. 432, para 42) “(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, ‘substantial and compelling reasons’, ‘good and sufficient grounds’, ‘very strong circumstances’, ‘distorted conclusions’, ‘glaring mistakes’, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of ‘flourishes of language’ to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person

shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

16. In Ghurey Lal v. State of U.P (2008) 10 SCC 450, this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court’s acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In State of Rajasthan v. Naresh (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that: (SCC p. 374, para 20) “20. ... an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused.”

18. In State of U.P. v. Banne (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include: (SCC p. 286, para 28)“(i) The High Court’s decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court’s conclusions are contrary to

evidence and documents on record;

(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) This Court must always give proper weight and consideration to the findings of the High Court;

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal." A similar view has been reiterated by this Court in Dhanpal v. State (2009) 10 SCC 401.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference." (emphasis supplied)

7.2.2 *When the findings of fact recorded by a court can be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under:*

"20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously

defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn (1984) 4 SCC 635, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons 1992 Supp (2) SCC 312, Triveni Rubber & Plastics v. CCE 1994 Supp. (3) SCC 665, Gaya Din v. Hanuman Prasad (2001) 1 SCC 501, Aruvelu v.State (2009) 10 SCC 206 and Gamini Bala Koteswara Rao v. State of A.P.(2009) 10 SCC 636).” (emphasis supplied)

7.2.3 *It is further observed, after following the decision of this Court in the case of Kuldeep Singh v. Commissioner of Police (1999) 2 SCC 10, that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.*

7.3 *In the case of Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436, this Court again had an occasion to consider the scope of Section 378 Cr.P.C. and the interference by the High Court in an appeal against acquittal. This Court considered catena of decisions of this Court right from 1952 onwards. In paragraph 31, it is observed and held as under:*

“31. An identical question came to be considered before this Court in Umedbhai Jadavbhai (1978) 1 SCC 228. In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on re-appreciation of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under: (SCC p. 233)

“10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case.”

31.1 In Sambasivan v. State of Karala (1998) 5 SCC 412, the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on re-appreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court. While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under: (SCC p. 416) “

8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in Ramesh Babula Doshi v. State of Gujarat (1996) 9 SCC 225 viz. first recording its conclusion on

the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well-considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case."

31.2. In K. Ramakrishnan Unnithan v. State of Karala (1999) 3 SCC 309, after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of

acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to reappreciate the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.

31.3. In Atley v. State of U.P. AIR 1955 SC 807, in para 5, this Court observed and held as under: (AIR pp. 809-10)

“5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 Cr.PC came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence of the accused is not weakened but strengthened by the

judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.

If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, Surajpal Singh v. State AIR 1952 SC 52; Wilayat Khan v. State of U.P. AIR 1953 SC 122) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.

31.4. In K.Gopal Reddy v. State of A.P. (1979) 1 SCC 355, this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule.” (emphasis supplied)

15. Thus, the position which emerges from a perusal of the law as settled by the Hon'ble Supreme Court through its catena of judgments in matters pertaining to appeals against acquittal can be summarized as under:-

- a) Powers of High Court in dealing with criminal appeals are equally wide whether the appeals are against conviction or acquittal.
- b) In dealing with appeal against acquittal, the High Court bears in mind that the presumption of innocence is strengthened.
- c) As an appellate Court, the High Court is generally slow in disturbing the finding of fact recorded by the trial Court, particularly when the said finding is based on an appreciation of oral evidence because the trial Court has the advantage of watching the demeanour of the witnesses who have given evidence.
- d) That the interference of the High Court in an appeal against the order of acquittal would be justified only if there are "very substantial and compelling reasons to do so".
- e) The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, even though the view of the appellate court may be the more probable one.
- f) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail the extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal, than to curtail the power of the court to review the evidence and to come to its own conclusion.
- g) The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible

material. The finding may also be said to be perverse if it is “against the weight of evidence”, or if the finding so outrageously defies logic as to suffer from the vice of irrationality.

CONCLUSION:

16. In view of the factual aspects noticed above and the material deficiencies and discrepancies in the evidence adduced by the appellant-complainant before the trial Court and failure of the appellant-complainant to establish as to how the judgment passed by the Judicial Magistrate First Class, Dera Bassi suffered from any illegality, perversity impropriety or gross misappreciation of evidence, I do not find any ground to interfere in the said judgment.

The appeal is accordingly dismissed.

(VINOD S. BHARDWAJ)
JUDGE

April 27, 2022
S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>