

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-19045-2019 in/and
CRM-A-1085-2019
Reserved on: 10th August, 2022
Pronounced on :18th August, 2022

State of Union Territory

... Applicant

Versus

Manoj Kumar

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. J.S. Toor, APP, U.T., Chandigarh.

AVNEESH JHINGAN, J.

CRM-19045-2019

This is an application for condonation of delay of 38 days in filing the appeal/application.

For the reasons mentioned in the application, the same is allowed and delay of 38 days is condoned.

CRM-A-1085-2019

1. This is an application for grant of leave to appeal against judgment of acquittal of Manoj Kumar in case FIR No. 2, dated 14th January, 2016, under Section 12 of the Prevention of Corruption Act, 1988 (for short 'the Act'), registered at Police Station Vigilance, Chandigarh.

2. A complaint was received from BK Shrivastava (IAS retired) stating that he was an Enquiry Officer in a departmental enquiry against Manoj Kumar, Assistant Engineer (Buildings) in Estate Office, U.T., (hereinafter referred to as 'respondent'). The enquiry had concluded few

days back and it was fixed for the report on 16th April, 2015. On 12th April, 2015, respondent sought an appointment on phone by saying that he had something to say in his defence. On his insistence, the respondent was given time to meet the complainant. It was alleged that the respondent visited the residence of the complainant and offered an envelop containing money.

3. The background for holding the enquiry was that on 6th May, 2011, Rajinder Kaur made a complaint about illegal constructions being carried out in a house in Sector 20, Chandigarh. The respondent was charge sheeted for not taking timely action after issuance of notice. The earlier Enquiry Officer recommended exoneration of the respondent. The Disciplinary Authority did not concur with the recommendation and ordered further inquiry. Thereafter, the complainant was appointed as Enquiry Officer.

4. The prosecution adduced documentary evidence and examined eight witnesses. The respondent claimed that he was innocent, in his defence examined three witnesses and produced documentary evidence.

5. The trial court noted that as per the complaint the respondent gave a call on the mobile of the complainant, sought appointment, visited his house and offered money. While deposing the complainant stated that there was a 'missed call' on his mobile, he made a back call which was attended by the respondent. On insistence of the respondent he was given appointment for 12:15 PM for coming to residence of the complainant, where money was offered. There was change of the version put forth by the complainant.

6. As per the exhibit P-21, no call was received by the complainant from the phone of the respondent. The Investigating Officer PW-7 in his cross-

examination stated that complainant was using mobile phone of his wife and he might have made a phone call from her phone. He stated that the Customer Application Form of the SIM card used by the respondent was in the name of his wife but no such form was produced during the trial. The call details reports of the complainant had no record that on 12th April, 2015, a missed call was received from the respondent. As per the respondent he had received call from complainant, asking him to come to complainant's residence. The trial Court doubted the version of the prosecution as there was no evidence to substantiate the allegations that respondent made a call to the complainant. To fill up the Lacuna, as the respondent had not called the complainant, a supplementary statement of the complainant was recorded on 9th December, 2016, changing the version that the complainant had received a 'missed call'. The said version also did not help the case of the prosecution as call details report was not showing the 'missed call' on the mobile number of the complainant.

7. The trial Court considered that the sanction to prosecute granted vide order dated 9th December, 2016 (exhibit P-14) was not by the Competent Authority. Administrator of Chandigarh Administration was the Competent Authority to grant sanction. The sanction order was not signed by Administrator but had signatures of Sarabjit Singh, Secretary Engineering, Chandigarh Administration. He was examined as PW-8, no evidence was produced showing that only the power of issuance of sanction was delegated to him, the Administrator had applied his mind and on being satisfied sanction was granted.

8. Learned counsel appearing for U.T., Chandigarh, argues that trial Court erred in acquitting the respondent as it was not disputed that he

visited the house of the complainant on 12th April, 2015. The contention is that respondent was being prosecuted under Section 12 of the Act and no sanction under Section 19 of the Act was required.

9. The factum of respondent having visited the house of the complainant was never disputed. As per the prosecution respondent sought time and thereafter offered the bribe, whereas the defence taken was that complainant called the respondent with regard to the pending inquiry. There was failure of prosecution to prove either the initial version or the version made in the supplementary statement.

10. The contention that no sanction was required under Section 19 of the Act, needs not be expounded, as the respondent was acquitted not only for non grant of proper sanction but also on failure of the prosecution to prove its case to the hilt.

11. 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”

12. 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.”

13. 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 reason.

14. The application is dismissed.

(AVNEESH JHINGAN)
JUDGE

18th August, 2022
Parveen Sharma

Whether reasoned/speaking	Yes
Whether reportable	Yes