

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-484 of 2021

Date of Decision: 15th July, 2022

State of Haryana

... Petitioner

Versus

Dinesh Kumar and another

... Respondents

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Gurmeet Singh, AAG, Haryana.

AVNEESH JHINGAN, J.(Oral)

This is an application for grant of leave to appeal against acquittal of the respondents in FIR No. 211 dated 14.5.2018, under Sections 7 and 13 of the Prevention of Corruption Act, 1988 (for short, 'the Act') registered at Police Station Rai, Sonipat.

The facts in brief are that on the basis of a complaint made by Inspector-Rishikant, Station House Officer, Police Station Rai, Sonipat the FIR was registered. It was alleged that a video was sent by Inspector Jai Singh, showing that Constable Dinesh and SPO Sandeep posted at Police Station Rai were taking money from the drivers of vehicles passing through KMP expressway. A DVD was prepared and attached with the file. A phone call was received from Suresh that he had recorded the video. Suresh along with driver Rajesh and Dharampal were called by Deputy Superintendent of Police. Suresh handed over his mobile to the police.

The prosecution heavily relied upon the depositions of PW3-Suresh driver of the truck bearing registration No. RJ-18GB-0428, PW4-

Dharampal, owner of truck bearing registration No. HR-61A-1219 and PW5-Rajesh, owner of truck bearing registration No. HR-63B-4270. None of these prosecution witnesses i.e. PW3 to PW5 supported the case of the prosecution. They denied that the accused had made the demand or accepted the money. Suresh deposed that he had not recorded the video. He did not identify the respondents present in court. He further stated that exhibited mobile was not the one which he had handed over to the police. PW12-Constable Balraj deposed that CD containing the recording was prepared from the data received through e-mail from Inspector Rishi Kant. As per report of Forensic Science Laboratory Ex.MO/1, there was no proof to prove that recording in the mobile was original. Failure of the prosecution to prove the guilt of the respondents resulted in acquittal.

Learned counsel for the State contends that in the video recording, the respondents were visible accepting the money from the truck drivers, the trial court erred in acquitting the respondents.

Heard learned counsel for the State at some length and perused the record.

From the perusal of the record, it is forthcoming that material prosecution witnesses including the witness who had allegedly recorded the incident and made a phone call to the police turned hostile. No evidence was adduced to prove the twin conditions i.e. demand and acceptance of illegal gratification.

It would be appropriate to quote the following decisions.

Supreme Court in **Criminal Appeal No. 261 of 2022—K. Shanthamma v. The State of Telangana**, decided on 21.2.2022 held:

*“7. We have given careful consideration to the submissions. We have perused the depositions of the prosecution witnesses. The offence under Section 7 of the PC Act relating to public servants taking bribe requires a demand of illegal gratification and the acceptance thereof. The proof of demand of bribe by a public servant and its acceptance by him is sine quo non for establishing the offence under Section 7 of the PC Act. In the case of *P. Satyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and another* (2015) 10 SCC 152, this Court has summarised the well-settled law on the subject in paragraph 23 which reads thus:*

“23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder.”

(Emphasis supplied)

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.”

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”

No case is made out of 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 grant of leave to appeal.

The application for grant of leave to appeal is dismissed.

(AVNEESH JHINGAN)
JUDGE

15th July, 2022
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Whether reasoned/speaking	Yes
Whether reportable	Yes