

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-51133-2022

Date of Decision: 01.12.2022

RAVINDER SINGH DHANKHAR

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

Coram: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Ms. Kiran Bala Jain, Advocate
for the petitioner

Mr. Chetan Sharma, AAG, Haryana

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition is seeking setting aside of judgment dated 10.09.2018 whereby learned JMIC Jhajjar, has dismissed protest petition of the petitioner and judgment dated 10.05.2022 whereby learned Sessions Judge, Jhajjar has dismissed revision of the petitioner.

2. The brief facts emerging from the record are that the petitioner lodged an FIR No.749 dated 07.12.2010 under Sections 148, 149, 427, 447 of IPC at Police Station Jhajjar, alleging that respondents have destroyed his mustard crop which was sowed over land comprised in Khasra No.1797, situated at village Kiloi, District Jhajjar, as 'Gair Morusi'. It was alleged that respondents came to fields of the petitioner with weapons in a car bearing Registration No.HR-10B-4078, motorcycle bearing registration No.1663 and other vehicles whose registration numbers could not be noticed due to the fear and darkness. The police investigated the matter and filed cancellation report which was accepted by Additional Chief Judicial Magistrate, Jhajjar, vide order dated 28.01.2012. The petitioner preferred CRM-M-4464 of 2012 before this Court

disposed of aforesaid petition with a liberty to take recourse to appropriate proceedings to challenge the cancellation report. The petitioner preferred protest petition before learned trial Court. The petitioner in its preliminary evidence examined 8 witnesses i.e. CW-1 to CW-8. The petitioner further tendered documentary evidence. The trial Court directed SHO, Police Station Jhajjar to submit the report under Section 202 Cr.P.C. The SHO concerned filed its report dated 14.08.2017. Learned trial Court after considering report of the SHO as well preliminary evidence came to a conclusion that case of complainant is highly suspicious and doubtful. The petitioner has filed protest petition by concealing true and material facts.

3. The petitioner preferred revision petition before learned Sessions Court, Jhajjar, which came up for consideration learned Session Judge, who vide impugned order 10.05.2022, dismissed the revision petition.

4. Learned counsel for the petitioner would submit that on the complaint of the petitioner, FIR came to be registered and respondents were declared proclaimed offender. The police under the influence of respondents had filed cancellation report which was wrongly accepted by learned Trial Court. The petitioner had strong prima facie case for summoning the respondents, however, trial Court in a mechanical manner relied upon report under Section 202 Cr.P.C submitted by SHO.

5. Learned Trial Court has found that the protest petition filed by the petitioner is highly suspicious and doubtful. This view was accepted by the learned Session Judge, Jhajjar, while dismissing the revision filed by the petitioner.

6. The petitioner through Section 482 Cr.P.C. has indirectly invoked revisionary jurisdiction of this court. The scope of interference while exercising

power of revision against judgment of acquittal is very limited.

6.1 While adverting with Section 439 of old Criminal Procedure Code which in its present avatar is Section 401, a four judge bench of Hon'ble Supreme Court in *D. Stephens v. Nosibolla* 1951 SCC 184 has held:

“12. The revisional jurisdiction conferred on the High Court under Section 439 of the Code of Criminal Procedure is not to be lightly exercised, when it is invoked by a private complainant against an order of acquittal, against which the Government has a right of appeal under Section 417. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice. This jurisdiction is not ordinarily invoked or used merely because the lower court has taken a wrong view of the law or misappreciated the evidence on record.”

6.2 A four judge bench of Hon'ble Supreme Court reiterating the above opinion in *Logendranath Jha v. Polai Lal Biswas* 1951 SCC 856 has held:

“9. ... Though sub-section (1) of Section 439 authorises the High Court to exercise, in its discretion, any of the powers conferred on a court of appeal by Section 423, sub-section (4) specifically excludes the power to ‘convert a finding of acquittal into one of conviction’. This does not mean that in dealing with a revision petition by a private party against an order of acquittal, the High Court could in the absence of any error on a point of law, reappraise the evidence and reverse the findings of facts on which the acquittal was based, provided only it stopped short of finding the accused guilty and passing sentence on him.

10. By merely characterising the judgment of the trial court as ‘perverse’ and ‘lacking in perspective’, the High Court cannot reverse pure findings of fact based on the trial court's appreciation of the evidence in the case. That is what the learned Judge in the court below has done, but could not, in our opinion, properly do on an application in revision filed by a private party against acquittal”.

6.3 A three judge bench of Hon'ble Supreme Court in *K. Chinnaswamy*

7. *It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be: where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of Section 439(4). We have therefore to see whether the order of the High Court setting aside the order of acquittal in this case can be upheld on these principles.*

6.4 A two judge bench of Hon'ble Supreme Court after noticing its previous judgments in *Mahendra Pratap Singh v. Sarju Singh* (1968) 2 SCR 287 has held:

“8. The practice on the subject has been stated by this Court on more than one occasion. In D. Stephens v. Nosibolla [1951 SCC 184 : AIR 1951 SC 196 : 1951 SCR 284] only two grounds are mentioned by this Court as entitling the High Court to set aside an acquittal in a revision and to order a retrial. They are that there must exist a manifest illegality in the judgment of the Court of Session ordering the acquittal or there must be a gross miscarriage of justice. In explaining these two propositions, this Court further states that the High Court is not entitled to interfere even if a wrong view of law is taken by the Court of Session or if even there is misappreciation of evidence. Again, in Logendranath Jhav. Polai Lal Biswas [1951 SCC 856 : AIR 1951 SC 316 : 1951 SCR 676] this Court points out that the High Court is entitled in revision to set aside an acquittal if there is an error on a point of law or no appraisal of the evidence at all. This Court observes that it is not sufficient to say that the judgment under revision is ‘perverse’ or ‘lacking in true correct perspective’. It is pointed out further that by ordering a retrial, the dice is loaded against the accused, because however much the High Court may caution the subordinate court, it is always difficult to re-weigh the evidence ignoring the opinion of the High Court. Again in K. Chinnaswamy Reddy v. State of A.P. [AIR 1962 SC 1788 : (1963) 3 SCR 412] it is pointed out that an interference in revision with an order of acquittal can only take place if there is a glaring defect of procedure such as that the Court had no jurisdiction to try the case or the Court had shut out some material evidence which was admissible or attempted to take into account evidence which was not admissible or had overlooked some evidence. Although the list given by this Court is not exhaustive of all the circumstances in which the High Court may interfere with an acquittal in revision it is obvious that the defect in the judgment under revision must be analogous to those actually indicated by this Court”.

7. The Hon'ble Supreme Court in a catena of judgments while dealing with scope and powers of the appellate/revisionary courts in dealing with an appeal/revision against an order of acquittal has elucidated:

- i. An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
- ii. 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.
- iii. 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.
- iv. **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.

- v. 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.

8. In the case in hand:-

- i. The police had investigated the matter and filed cancellation report;
- ii. There is no evidence of connivance of police officials with the respondents;
- iii. The petitioner has failed to prove his possession over land in question;
- iv. As per revenue record, the respondents are 'Gair Morusi' over the land in question to the extent of $\frac{1}{2}$ share and petitioner did not disclose this fact before the trial Court;
- v. The petitioner has claimed himself as 'Gair Morusi' which means someone else is owner of the land in question;
- vi. As per report of SHO under Section 202 Cr.P.C, the location of mobile numbers of respondents was not found at the place of alleged incident;
- vii. The respondent-Vedwati had already filed two civil suits against the petitioner and petitioner did not disclose this fact;
- viii. The respondent No.3 and petitioner are close relatives i.e. *Bua-Bhatija*;
- ix. There are concurrent findings of both the Courts below;
- x. The dispute primarily seems to be civil dispute and petitioner, just to pressurize the respondents, wants to put the criminal law into motion

9. In view of the above narrated facts, having regard to the findings recorded by trial court including accepted legal position, this Court is of the considered opinion that in the case at hand there is no infirmity or irregularity in

the impugned order whereby trial Court as well Appellate Court has dismissed the protest petition filed by the petitioner. Accordingly, this Court fully agrees with the finding recorded by trial Court and Appellate Court. The impugned judgment and order being speaking, based upon correct appreciation of facts, applicable law & judicial precedents and well-reasoned needs no interference of this Court.

10. The present petition being bereft of merit deserves to be dismissed and accordingly is hereby dismissed.

(JAGMOHAN BANSAL)
JUDGE

01.12.2022
mohit kumar

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No