

**218 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A-2479-2019

Date of Decision: 27th September, 2022

State of U.T., Chandigarh

... Applicant

Versus

Naresh Kumar @ Sonu and another

... Respondents

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. J.S. Toor, Addl. PP, U.T., Chandigarh.

AVNEESH JHINGAN , J.(Oral)

1. This is an application for grant of leave to appeal against acquittal of the respondents vide judgment dated 1st August, 2019 in case FIR No. 3, dated 8th August, 2014, under Sections 8, 12, 13(2) of Prevention of Corruption Act (for short 'the Act') read with Section 120-B of Indian Penal Code, 1860, registered at Vigilance, Chandigarh.

2. As per the case set up by the prosecution, Mehakveer Sandhu made a complaint alleging that he along with his two sisters went to office of Regional Licensing Authority (for short 'RLA') for preparing driving licenses of his sisters. In the parking Naresh Kumar @ Sonu approached him stating that he had good contacts in the office and can get licences without standing in queue and undergoing test. He demanded bribe of Rs. 3,000/-, the deal was struck for Rs.1700/-. The complainant had recorded the conversation. Thereafter, Naresh @ Sonu called Rakesh an employee of RLA office who took the sisters of the complainant in the office and submitted the files. A Video recording was done by the complainant. On receipt of complaint, Inspector Gurjit Kaur registered the

complainant, memory card, CD and recovered cash of Rs. 17,00/- (500x3, 100x2) from Naresh Kumar @ Sonu. Two files of Randeep Sandhu and Pardeep Sandhu were taken in the possession. The voice sample and recordings were sent to FSL. The prosecution to prove its case examined twenty-one witnesses. The complainant and his sister neither supported the case of the prosecution nor the recordings.

The trial Court considering that :

- (i) there was no substantiative evidence to support the allegation of demand and acceptance of illegal gratification;
- (ii) the details of the numbers of the currency notes were neither noted prior to handing over to the accused nor after its recovery;
- (iii) PW-13, 14 and 17 on an application were re-summoned to confront the audio and video recording. Three witnesses denied that they had prepared an audio or video recording;
- (iv) Lastly, the complainant had not identified the accused in the Court; and the accused(s) were acquitted.

3. Learned counsel for U.T., Chandigarh submits that trial Court erred in acquitting the accused. The money was recovered from the Naresh Kumar @ Sonu. There was an audio and video recording supporting the allegations.

4. It would be gainful to quote the following decisions.

Supreme Court in **Criminal Appeal No. 261 of 2022—K.**

Shanthmma 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)

5. 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.”

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. The complainant and his sister were declared hostile. The complainant had not identified the accused in the Court. The audio and video recording lost its credibility as the complainant had not supported it by not stating in unequivocal term that he recorded the audio and video. There was no substantial evidence to prove demand and acceptance of the bribe, mere recovery of money from the accused would itself not be sufficient. There is another angle to be considered. The non marking of the currency notes and failure to note the serial numbers of the currency notes was fatal, as recovered currency could not be connected with the amount given by the complainant.

8. 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 grant of leave to appeal.
9. The application for grant of leave to appeal is dismissed.

(AVNEESH JHINGAN)
JUDGE

27th September, 2022
Parveen Sharma

Whether reasoned/speaking	Yes
Whether reportable	Yes