

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

221(1)	CRM-A-656-MA-2017
221(2)	CRM-A-726-MA-2017
221(3)	CRM-A-786-MA-2017
221(4)	CRM-A-1194-MA-2017

Haryana State Pollution Control Board, Sector-6, Panchkula

.....Applicant

Versus

M/s Vatika Limited, Vatika Triangle,
Sushant Lok-I, Block-A, Gurgaon
through its Director(s)/Principal Officers
and another

.....Respondents

Date of Decision:14.03.2022

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

Present: Mr. Amar Vivek Aggarwal and
Mr. Shiva Prashar, Advocates,
for the applicant.

VINOD S. BHARDWAJ, J.

By means of this common judgment, I dispose of all the four applications seeking leave to appeal arising out of the judgments dated 03.03.2016 in cases No.36, 37 and 39 of 2009 (Haryana State Pollution Control Board, Sector-6, Panchkula Versus M/s Vatika Limited, Vatika Triangle, Gurgaon through its Director/Principal Officers and others and judgment dated 02.03.2016 in case No.38 of 2009 (Haryana State Pollution

Control Board, Sector-6, Panchkula Versus M/s Vatika Limited, Vatika Triangle, Gurgaon through its Director/Principal Officers and others, respectively passed by Special Environment Court, Faridabad.

2. All the four petitions relate to the same developer albeit for separate projects i.e. **(i)** construction of M/s Vatika Technology Park, Sector-49, **(ii)** construction of M/s Group Housing Colony, Vatika City, Sector-49, **(iii)** construction of M/s Vatika Atrium, Sector-53 and **(iv)** construction of M/s Vatika Towers, Sector-54, in Gurugram(Gurgaon) as it was then for being in violation of Notification No.S.O.801(E) dated 07.07.2004 and Notification No.1533 dated 14.09.2006. However, for facility of reference, facts have been taken from **CRM-A-656-MA-2017**.

3. The applicant-appellant has been heard at length to ascertain the legality and validity of the judgment passed by the Special Environmental Court, Faridabad.

4. It has been submitted by the learned counsel for the petitioner that the questions and arguments advanced are common and identical, hence, all the four cases have been taken up together for consideration and adjudication. The merits of the case have been examined with the assistance of the counsel to adjudicate the application seeking leave to appeal.

5. Assailing the judgments passed by the Special Environment Court, learned counsel has submitted that the same were based on non-appreciation of the evidence adduced on record. It is argued that the respondents had violated the Notifications issued under the Environment Laws and the respondents-Company, having initiated construction prior to seeking environmental clearance, had rendered itself liable to be prosecuted and punished under Section 15 of the Environment (Protection) Act, 1986.

6. Learned counsel argued that the Ministry of Environment and Forests, Govt. of India (for short “the “MOEF”) had initially issued the Environment Impact Assessment Notification dated 27.01.1994 mandating that any existing industry or project listed in Schedule-I ought to submit an application to the Secretary, Ministry of Environment and Forests and to obtain clearance from the MOEF. The said Notification was amended on 07.07.2004 and a further amendment was done vide Notification dated 14.09.2006 making it compulsory for the respondents and other similarly placed units to obtain environmental clearance before starting any operation of the project/new construction etc. It is argued that without obtaining environmental clearance, the respondents-accused undertook construction activities rendering themselves liable for having committed the offence. Reliance was placed on the public notices issued to the respondent as well as the show cause notices sent by the Haryana State Pollution Control Board (for short the “HSPCB”) to submit that the same duly proved that the respondent had raised construction in violation of the rules and regulations and that having been left with no alternative, the proceedings were initiated. The respondent did not stop construction despite notice. The import of notices is in the nature of contemporaneous evidence to substantiate the case of the prosecution and the same has been grossly ignored by the Special Environment Court, Faridabad. The order of acquittal was thus assailed as having been passed in a mechanical manner and without considering the merit of the evidence adduced before it. Learned counsel also argued that Special Environment Court has ignored the deposition of the witnesses as well the evidence brought before it.

the record of the case and the impugned judgments with his able assistance.

8. A perusal of the orders under challenge shows that the said submissions were duly considered by the Presiding Officer of the Special Environment Court, Faridabad and findings were recorded after consideration of the evidence as well as rival submissions. The relevant part of the judgments is extracted as under:-

“16. In the present case the charge against the present accused is that they were engaged in promoting, marketing and construction of M/s Vatika Technology Park, Sector-49, Gurgaon without taking any prior environment clearance from MOEF made compulsory under the notification of MOEF dated 27.1.1994 amended on 7.7.2004 and 14.9.2006 and as such they violated the provisions of Environment Protection Act, 1986 punishable under Section 15 of the Act.

17. To prove the allegations the prosecution/complainant was required to prove that the activity allegedly being carried by the accused was covered in the notification of 1994 duly amended by notification dated 7.7.2004 and 14.9.2006 of MOEF. He was further required to prove that the activity of construction was started after publication of notification and before obtaining environment clearance. He was further required to prove that granting of environment clearance also had no any effect upon construction.

18. To prove these allegations prosecution/complainant examined two witnesses. Now let us take a brief look on the evidence tendered by the prosecution. Sh. Bhupinder Rinwa, Regional Officer, Gurgaon appeared as CW1 and deposed that he was posted as RO, Gurgaon and the present complaint was filed by the then Regional Officer Dr. CV Singh. He deposed that accused no.1 M/s Vatika Technology Park and accused no.2 and 3 its directors and

accused no.4 its General Manager were engaged in promoting, marketing and construction and were responsible for violating the notifications dated 27.1.1994 , 7.7.2004 and 14.9.2006. He deposed that accused had started construction at the site before 2007. He deposed that the photographs and CD were prepared. He deposed that accused were duly intimated by issuing public notices as well as through show cause notices dated 28.09.2005, 08.08.2006 and 31.08.2007. He had placed on file documents Ex.C1 to Ex.C12. He deposed that accused had violated the provisions of EP Act. In his cross examination he admitted that he had no personal knowledge with regard to facts of present case. He admitted that no any record was available with regard to the date of commencement of construction on the site. He admitted that the complaint was dated 8.1.2009. He admitted that the environmental clearance was obtained by the accused on 24.7.2007. He admitted that the allegation in the complaint was that the construction was commenced without obtaining the permission from MOEF. He denied the suggestion that the complainant had no authority to institute the present complaint. He denied the suggestion that no any construction was commenced by the accused before taking permission from MOEF.

Dr. CV Singh, when appeared as CW2, deposed that he was posted as Regional Officer in Gurgaon Region from 2005 to 2009. He deposed that he had conducted the public hearing on 9.9.2006 as Regional Officer, Gurgaon. He deposed that the photography of the public hearing was done and CD was also prepared. He has placed upon file photographs Mark-A to Mark-G and CD Mark-H. He deposed that accused had started the construction without obtaining environment clearance from EIA. In his cross examination he admitted that photographs Mark-A to Mark-G and CD Mark-H were placed at the time of evidence. He denied the suggestion that no any public hearing was conducted nor any photographs were snatched nor any CD

was prepared. He denied the suggestion that public hearing was false. He did not prepare any sketch of the site. He denied the suggestion that the site was not inspected.

19. Section 15 of The Environment Protection Act, 1986 provides penalty for contravention of the provisions of the Act, rules, orders and directions therein. The present complaint is for violation of notification of MOEF dated 27.1.1994 which has been further amended by notification dated 7.7.2004 whereby new construction projects have been included at serial no.31 in the list of projects requiring prior environment clearance from the Central Government. The only exemption given therein has been explained in notification dated 7.7.2004 to the effect that new construction projects, which were undertaken without obtaining the environmental clearance so required under this notification and where construction work has not come up to the plinth level, shall require clearance under this notification with effect from 7th day of July, 2004 i.e. those projects where construction works had not come up to plinth level on 7.7.2004 or new construction projects were required to obtain environment clearance. It is admitted fact that the environment clearance was given to the accused no.1 on 24.7.2007.

20. In the present case the allegations against the accused are that they started construction of M/s Vatika Technology Park, Sector-49, Gurgaon without taking prior environment clearance. PW1 Bhupinder Rinwa, RO Gurgaon has placed upon file copy of show cause notices issued by the Board along with copy of notification of MOEF January, 1994, July 2007, and September, 2006. His evidence has been supported by PW2 Dr. CV Singh, original complainant in this case, who has also deposed that the construction in this case was started without obtaining prior environmental clearance. No doubt all the construction projects which were undertaken without obtaining clearance so required under the notification

*of MOEF were to obtain clearance if the construction had not started or had not come up to plinth level on 7.7.2004. Thus, it was the liability of the complainant/prosecution to prove that the construction of the project of present accused was started after 7.7.2004 and the accused were continuously doing the construction till receipt of environment clearance. Perusal of complaint/evidence of PW1 Bhupinder Rinwa and PW2 Dr. CV Singh shows that no any date has been mentioned as to when the construction of this project was started. However, it is the submission of the Id. Counsel for the accused that licence of the project Vatika Technology Park was obtained from DTP firstly on 16.1.2006 but no any construction was started at that time. Accused no.1 started the construction after obtaining the environment clearance and after taking approval of revised building plan on 8.4.2008 from DTCP. I am of the considered opinion that it was the responsibility of the prosecution to bring upon file the date of starting construction and in absence of date and evidence, in support of the allegation of starting construction before obtaining environment clearance, the prosecution against the accused is liable to be failed. In **CRM no.26803 of 2010 decided on 23.8.2011 titled as M/s Wellworth Construction Pvt. Ltd. Vs. Haryana State Pollution Control Board and another** while dealing with similar matter it has been observed by Hon'ble Mrs. Justice Sabina "A perusal of the complaint reveals that the complaint was filed against the petitioner and others on the allegation that the petitioner had started new construction project without obtaining any prior Environment Clearance Certificate from the Ministry of Environment and Forests. The complaint has been filed in November, 2008, whereas, the clearance certificate has been issued to the petitioner on 4.10.2007. In the complaint it has not been mentioned that as to when the construction project was started by the company. A perusal of the complaint also reveals that the allegations leveled therein*

are vague as it has not been stated therein as to how the offence under Section 15 of the Act had been committed by the petitioner-company”.

21. *In the present case also there is no any evidence as to when the construction was started. The obtaining of prior environment clearance by the present accused is not disputed. Further, in the present case the environment clearance was obtained by the present accused on 24.07.2007 and the complaint was moved on 9.1.2009 i.e. after a gap of 18 months, nowhere justifies the cause. In **CRM No.24280 of 2013 titled as Regional Officer (South) Delhi Pvt. Ltd. and another Vs. Regional Officer, Gurgaon Region** decided on 30.9.2014 it has been observed by Hon'ble Mrs. Justice Ritu Bahri “It had been admitted by the respondents that petitioner no.1-company had obtained the environmental clearance on 6.6.2007. After getting the environmental clearance, the above complaint was filed after a gap of 02 years on 9.1.2009 and the petitioners have been summoned to face the trial, vide order dated 20.7.2009. Reference has been made to order dated 23.8.2011 passed by the Hon'ble Court in CRM-M-26803 of 2010 titled as M/s Wellworth Construction Pvt. Ltd. Vs. HSPCB and another wherein on the similar grounds, the complaint as well as summoning orders were quashed. Learned counsel for the respondents has not disputed the factual position that the petitioner no.1-company had obtained the environmental clearance on 6.6.2007. Keeping in view the fact that petitioner no.1-company had obtained the environmental clearance on 6.6.2007 and further the case of the petitioner is fully covered by the order dated 23.8.2011, complaint no.12 of 2009 dated 9.1.2009 and summoning order dated 20.7.2009 are hereby quashed”.*

22. *In the present case also the complaint has been filed after a gap of 18 months. Further there is no any date of starting construction and conclusion of the construction.*

Further the licence from the DTP was obtained by the accused no.1 on 8.4.2008 i.e. well after obtaining the environment clearance from the MOEF. It was the burden upon the prosecution to prove that the construction was started after 7.7.2004 and it was continuously done by the accused no.1 till obtaining the environment clearance yet the prosecution has not been able to discharge its burden hence the accused no.1 and 4 are hereby liable to be acquitted.”

9. Upon consideration of the submissions advanced by the appellant as well as the documents adduced on record as well as the judgments of the Special Environment Court, the following aspects emerge:-

(i) It is undisputed that the respondents-accused had obtained environmental clearance for the project in question on 24.07.2007.

(ii) CW1-Sh. Bhupinder Rinwa, Regional Officer had alleged that the construction at the site had commenced before 2007, however, he acknowledged in his cross-examination that there is no record available with regard to the date of commencement of construction on the site.

(iii) That the said witness also admitted that the complaint in question was dated 08.01.2009 and thus did not dispute that it was filed after a delay of merely 18 months from the last show cause notice. No explanation has been tendered by him as to why the appellant-Department did not initiate the proceedings expeditiously and immediately.

(iv) CW2-Dr. C.V. Singh had appeared on behalf of the appellant and it has been stated that he had conducted the public hearing of the Environment Clearance Committee on 09.09.2006. The said witness had also failed to point out any date of commencement of the construction at the site.

(v) That holding of the meeting of the Environment

Clearance Committee on 09.09.2006 does not by itself establish that the construction at the site had commenced prior thereto. No such material has been exhibited by the appellant-Haryana State Pollution Control Board to display that the construction at the site had commenced prior to the issuance of the environmental clearance for the construction of the project at the site.

(vi) It is also not disputed by the witnesses of the respondents that the Notification of the MOEF as amended provided that the environmental clearance was necessary to be obtained for the projects except where the construction has reached the plinth level as on 07.07.2004. Hence, the Notification dated 07.07.2004 was not applicable w.r.t. the projects where construction had been initiated without the said clearance and had reached at the plinth level. Thus, the second burden to be discharged by the Haryana State Pollution Control Board(appellant herein) is to the effect that the construction, even if commenced, did not fall under the exempted category as per the Notification of the MOEF dated 07.07.2004.

(vii) The appellant wishes to impress upon the Court that an inference should be made that merely because licence was granted to the petitioner after 2004, there could have been no commencement of construction at site prior to issuance of licence. However, he has failed to point out any provision under the Evidence Act where-under such a presumption may be drawn.

(viii) Commencement of construction is a question of fact which is required to be established by leading evidence in the affirmative. Such burden has to be satisfactorily discharged by the prosecuting department.

(ix) Further, a mere suspicion on the basis of evidence is not

sufficient to convict a person for a penal offence. The issue of notice, at best, is a circumstance which is likely to create a suspicion but the same is not a proof of violation of the Notification.

(x) That both the witnesses have merely placed reliance on the show cause notices and have assigned no reason for the delay of 18 months in filing the complaints.

(xi) That no negative burden can be put up on the accused to show that they had not commenced construction in violation of the Notifications in question.

(xii) That the burden of proof of the respondents-accused having committed a crime lays upon the appellant and it was for the appellant to establish that the respondents-accused have violated the mandatory statutory provisions rendering them liable to be punished.

(xiii) There can be no presumption of commission of the offence against the respondents-accused. As per the criminal jurisprudence, there is presumption of innocence till the charge against an accused is proved.

LEGAL POSITION IN APPEAL AGAINST ACQUITTAL

10. That while examining the judgment against acquittal, the scope of re-appreciation of the evidence as well as judicial interference has been interpreted by the Hon'ble Supreme Court 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 (1) 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 (1) (1934) L.R. 61 1. A. 398. (2) A.I.R. 1945 P.C. 151, very substantial and compelling reasons": vide Surajpal Singh v. The State (1). Similarly in Ajmer Singh v. State of Punjab (2), 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 Shoo 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 (2) and Harbans Singh v. The State of Punjab (4); 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 (1) (1952) S.C.R. 193, 201. (2) (1953) S.C.R. 418 (3) (1961) 3 S C. R. 120. (4) (1962) Supp. I.S.C.R. 104. 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.

Further, in a recent judgment, 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)

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 reappraise 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)

11. 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.

12. A conjoint reading of the facts that emerged from the case and the relevant documents as well as the guidelines laid down by the Hon'ble Supreme Court through its catena of judgments shows that the trial court duly considered all the arguments raised by the appellant. It also noticed that the foundation of the case of prosecution lay on the primary fact regarding the date of commencement of construction. It was required to establish as to whether the construction had been commenced prior to obtaining environmental clearance as per Notification dated 07.07.2004 and to rebut that the construction had not reached the plinth level on the said date. The complainant-HSPCB has also not given any explanation of inordinate delay. The Special Judge observed that the complainant-HSPCB has failed to discharge the primary burden and has sought to establish

commission of the offence on the basis of a mere probability since the notice had been issued upon the respondent. There is also nothing on record to show that the contents of the notice stand proved. Only an officer who paid a visit to the site framing basis of issuance of aforementioned notice could have proved the contents of the same. The appellant has failed to discharge the burden expected of it to the satisfaction of the Court. Issuance of a show cause notice, is at best, a circumstance leading to an inference/suspicion about commission, but the same shall fall short of sustaining and supporting a conviction.

CONCLUSION

13. It is thus evident that the view adopted by the trial court is a possible view, and the same does not suffer from any illegality, perversity, gross mis-appreciation of evidence or gross impropriety by the Special Environment Court, Faridabad. Such view should not ordinarily be interfered with. Once the opinion of the trial court is a possible opinion based on the facts and evidence of the case, the same shall not be interfered with only for the reason that the other view is also possible or is more probable. The judgments of the Special Environment Court referred to in Para No.1 above are thus, affirmed.

The instant appeals are accordingly dismissed.

March 14, 2022
seema

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No