

204 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-2864-2019 (O&M)

Date of Decision: 28th October, 2022

State of Punjab

... Applicant

Versus

Avtar Singh

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. A.P.S. Tung, Deputy Advocate General, Punjab.

AVNEESH JHINGAN , J.(Oral)

1. This is an application for grant of leave to appeal against the judgment acquitting Avtar Singh (respondent) in FIR No. 31, dated 11th December, 2014, under Sections 7 and 13 (2) of the Prevention of Corruption Act, 1988 (for short, 'the Act') registered at Police Station Vigilance Bureau, Patiala Range, Patiala.

2. The relevant facts are that there was a dispute between Raj Singh @ Rajan (complainant) and his neighbour Jaswinder Kaur with regard to the drain water. Jaswinder Kaur made a complaint against the complainant with the police. Both the parties were called to the police station. The respondent took an initiative and got the matter compromised. The complainant alleged that bribe of Rs. 5,000/- was demanded for supplying the copy of the compromise deed. He along with Raghubir Singh went to the Office of Vigilance Bureau on 11th December, 2014 and on his complaint, a trap was laid. Seven currency notes of Rs. 500/- denomination were laced with Phenolphthalein Powder and initialed. Raghubir Singh was

appointed as shadow witness. Complainant was directed to hand over the tainted currency to the respondent on demand. The shadow witness was directed to hear the conversation between the complainant and the respondent and to give signal on acceptance of money. The respondent was apprehended and on washing his hands and pocket of pants, the Sodium Carbonate solution turned pink. The prosecution examined the complainant, shadow witness and Jaswinder Kaur, none of these witnesses supported the case of the prosecution. Jaswinder Kaur specifically stated in her cross-examination that:- (i) no money was demanded or accepted by the respondent in her presence; (ii) the copy of the compromise deed was handed over to her and to the complainant on that very day; (iii) the complainant was having a grudge against the respondent as he was reprimanded by the respondent and made to touch her feet and (iv) the complainant left the police station abusing the respondent.

3. The shadow witness and the complainant in her cross-examination stated that no demand was made by the respondent and he refused to accept the money. While he was being apprehended by the Vigilance Officials, the laced currency notes were put in his pocket by the complainant. In the cross-examination of shadow witness Raghubir Singh, it revealed that on the day of the raid the complainant shook hand with the respondent.

4. The trial Court considering that the prosecution failed to prove demand and acceptance of the illegal gratification. Further, since the acceptance was not proved, the presumption under Section 20 of the Act could not be invoked against the respondent and he was acquitted.

5. Learned State counsel submits that official witnesses had supported the case of the prosecution. The shadow witness in his examination-in-chief had supported the case of the prosecution.

not even a single witness of the prosecution had specifically supported allegations of demand and acceptance of illegal gratification. The possession of tainted currency by the respondent was explained by the deposition of the complainant and the shadow witness. It would not be appropriate to rely upon the hand wash test moreso, when it was revealed that the complainant who had handled the laced currency notes shook hands with the respondent on the day of raid. As per the case set up by the prosecution, Rs.5,000/- was demanded by respondent for supplying the copy of the compromise deed. However, Jaswinder Kaur PW-10 deposed that the copy of compromise deed was supplied to the complainant on that very day. Hence, there was no occasion for respondent to demand illegal gratification.

7. The scope of interference in judgment of acquittal is well settled.

7.1 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."

7.2 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:

"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."

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

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

(AVNEESH JHINGAN)
JUDGE

28th October, 2022

Parveen Sharma

Whether reasoned/speaking	Yes
Whether reportable	Yes