

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.A. 235/2018**

Date of Decision: 11.10.2022

IN THE MATTER OF:

STATE

..... Appellant

Through: Mr.Pradeep Gahalot, APP for
State along with SI Suresh Bhatia,
P.S. Special Cell.

Versus

NARESH KUMAR JAIN & ORS

..... Respondents

Through: Mr.S.C. Buttan, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. This appeal is directed against the impugned judgment of acquittal dated 19.05.2014 passed by the learned Additional Sessions Judge – 03 Central Delhi in SC No.43/11, whereby, the respondents/accused were acquitted from charges under Sections 489-B, 489-C read with Section 120-B of the Indian Penal Code (in short 'IPC') in connection with FIR No.05/2005, registered at Police Station Special Cell, Delhi.

2. This court vide order dated 23.02.2018 in CRL. L.P. No. 646/14 was pleased to reject application for leave to appeal, so far as the same relates to respondent No.2 and 3. However, leave to appeal was granted

only against respondent No.1. Accordingly, this appeal has been registered as CRL.A. 235/2018 only against respondent No.1.

3. Learned counsel appearing on behalf of the appellant/State submits that the impugned judgment of acquittal is illegal and improper and the same has been passed in ignorance of material evidence against respondent No.1. According to him, the minor contradiction with respect to the place of seizure and the name with respect to the agency, who gave the input are immaterial, as the prosecution has been able to prove the case on reasonable doubt. He submitted that the prosecution has examined important witnesses to substantiate the allegation and therefore, findings given by the trial court are incorrect. He therefore, submits that learned trial court has also erred in directing the Commissioner of Police for taking action against the officers for creating false evidence against respondent No.1. According to him, there was no reason to create false evidence against any citizen.

4. Learned counsel appearing on behalf of the respondent No.1 on the other hand opposed the prayer and he submits that learned trial court has rightly come to a conclusion that the prosecution has failed to prove the case beyond reasonable doubt. According to him, the reasoning given by the learned trial court for acquittal of respondent No.1 based on sound legal principal that the accused cannot be convicted unless the prosecution proves the case beyond reasonable doubt. In the instant case, he submits that evidence has been created falsely to implicate respondent No.1. The place of incidence/recovery is very much important in the instant case. Since, the same itself has not been proved therefore, there is no reason to believe the prosecution story.

5. Learned counsel appearing on behalf of the respondent No.1, has placed reliance on a decision of the Hon'ble Supreme Court in the matter of *Bhaiyamiyan @ Jardar Khan Anr. v. State of M.P*¹, *State of Rajasthan v. Rajaram*² and the decision of this court in the matter of *State v. Pratap Narain Singh@ Prem Nath Singh*.³

6. I have heard the learned counsel appearing for the parties and perused the record.

7. As per the prosecution story, on 03.01.2005, the staff of Police Station Special Cell, received specific information from Central Intelligence Agency about the fake Indian Currency notes, that one Naresh Jain having his shop in Sadar Bazar, Delhi is transporting fake currency notes from outside Mehra sons, NDSE -1, New Delhi at about 5:00 PM. The said information was reduced in writing and raid was conducted at about 5:10 PM. According to the case of the prosecution, one car came from the side of Andrews Ganj which was parked by the driver opposite Mehra sons NDSE – 1. After about 20 minutes, respondent No.1 opened his car and was apprehended by the police and his identity was revealed as Naresh Jain S/o late Sh. Dev Raj Jain (respondent). On cursory search, one wad of currency notes of Rs.1000/- denomination was recovered from his left side pant pocket. The recovered currency notes were checked and were found to be counterfeited ones. According to prosecution all currency notes of Rs.4,00,000/- (rupees four lakhs) was seized from respondent No.1. Rukka was prepared and the case was registered. According to prosecution case, respondent No.1/ Naresh Jain disclosed that the

¹ AIR 2011 S.C. 2218

² AIR 2003 S.C. 3601

³ CRL. L.P. NO. 135/2007

currency in question came into his possession through Harjesh Narain and Lucky who were from Calcutta.

8. After completion of investigation, police filed the charge sheet in the court against respondent No.1, Sudhir Kumar @ Lucky and Harjesh Narain. Respondent No.1 was charged for offences punishable under Sections 489-B and 489-C read with Section 120-B of the IPC whereas, the other two discharged accused were charged for the offence punishable under Section 120-B of the IPC. All the accused pleaded not guilty and accordingly they were put to trial.

9. The prosecution has examined as many as 17 witnesses. There are two set of evidence. First set consists of oral testimonies of PW1, PW2, PW3, PW4, PW5 and PW17, who are the witnesses to the fact that respondent No.1 had given them fake currency notes in the course of business transaction. The second set of evidence consists of evidence of police officials who had conducted the investigation; they are PW6, PW7, PW12 and PW16. The remaining witnesses are police officials who were members of the raiding party, including the scientific witnesses.

10. Learned trial court after considering the entire evidence available on record has noted that the site plan Ex.PW16/B, which was prepared at the site shows the place of apprehension and arrest of respondent No.1/accused at NDSE – I. The Court while taking judicial note of the fact that if someone moves from Andrews Ganj side towards AIIMS, then it is not NDSE – I rather NDSE – II which would come on the way. All the witnesses of the prosecution PW8, PW10 and PW11 had deposed the fact that actually it is NDSE – I, where the accused was apprehended while coming from the side of Andrews Ganj. None of the prosecution

witnesses has deposed that it was NDSE – II. In, cross-examination of prosecution witnesses i.e. PW11 and PW16, they have stated differently with respect to the location of apprehension and arrest of respondent No.1.

11. It is noticed that during the course of arguments, learned SPP realising that the entire prosecution story is about to fail, has tried to cover up the lapse while stating therein that though the prosecution witnesses have stated that the arrest of respondent No.1 had taken place at NDSE – I, however, the site plan actually belongs to NDSE – II, where the accused was actually apprehended and arrested. The fact with respect to the occurrence / apprehension / arrest of respondent No.1, itself is not established beyond reasonable doubt by the prosecution. A summersault has been done by the prosecution during the course of argument that the site plan belongs to NDSE – II. Learned trial court has called the concerned roznamcha where DD entry 15 dated 03.01.2005 was reproduced and has specifically recorded in the impugned judgement that the same relates to specific entry of NDSE – I. The site plan Ex.PW16/B admittedly corresponds to NDSE – II. It is, thus seen that there are material contradiction with respect to oral evidence and the corresponding documentary evidence thereto. So far as the evidence with respect to the other witnesses, who stated that during the course of business transactions, fake currency was used by respondent No.1 is concerned, in paragraph 24 of the impugned judgment, the trial court has noted that the testimony of the above witnesses are not above **board**. The testimony of those witnesses was doubted by the trial court. Taking note of the one of the testimonies of the witnesses, who stated that in terms of the lease agreement dated 21.12.2004 which became effective from

25.12.2004, a sum of Rs.1,30,000/- (rupees one lakh thirty thousand) was paid as security by respondent No.1 whereas, the other co-accused person in their disclosure statement stated that the counterfeit currency was delivered to Naresh Jain on 29.12.2004. It is for this reason, the learned trial court has recorded that PW2 has deposed falsely.

12. The respondent No. 1 in his statement under Section 313 of the Cr.P.C. claimed innocence and stated that he was falsely implicated. According to respondent No.1, he was called on 03.01.2005 by SI Umesh Barthwal at his office at Lodhi Colony, Special Cell to join the investigation in some case. He was made to sit in the Police Station for the whole night without any cause. He further states that he asked the police officials the reason for his detention to which they did not reply, instead misbehaved and did not allow him to talk to his relatives. According to Section 313 Cr.P.C. statement, when the accused told that he would report the matter to the senior officials about his illegal detention, Mr. Umesh Barthwal became aggressive and ultimately, he implicated him in a false case. According to him, nothing was recovered from him and he examined one witness in his defence, namely, Dalbir Singh as DW-1, who deposed that he was driver to Naresh Jain since the year 2005. Dalbir Singh supported the version of the respondent /accused who stated that respondent No. 1 was taken to office of Special Cell at Lodhi Colony.

13. It is a settled legal position that the accused cannot be convicted unless the prosecution is able to prove the charges beyond reasonable doubt. The presumption of innocence is further strengthened when there is already adjudication on the charges and an order of acquittal is passed.

If the entire evidence available on record is minutely examined, the same would not establish the charges beyond reasonable doubt.

14. The Hon'ble Supreme Court in the matter of *State of Maharashtra v. Sujay Mangesh Poyarelar*⁴ while considering its earlier pronouncements including the decision in the case of *Chandrappa & Ors. v. State of Karnataka*⁵ has held that the power of the appellate court in an appeal against acquittal cannot be said to be restrictive and the High Court has full power to re-appreciate, review and reweigh at large the evidence on which the order of acquittal is founded and to reach its own conclusion on such evidence. Both questions of fact and of law are open to determination by the appellate Court. It has also been held that nonetheless it is not correct to say that unless the appellate Court in an appeal against acquittal under challenge is convinced that the finding of acquittal recorded by the trial Court is 'perverse', it cannot interfere. If the appellate Court on re-appreciation of evidence and keeping in view well established principles, comes to a contrary conclusion and records conviction, such conviction cannot be said to be contrary to law.

15. The Supreme Court in the matter of *Hakeem Khan & Ors v. State of M.P.*⁶ has again considered the powers of the appellate court for inference in cases where acquittal is recorded by the trial court. In the said decision it has been held that if the 'possible view' of the trial court is not agreeable for the High Court, even then such 'possible view' recorded by the trial court cannot be interdicted. It is further held that so long as the view of the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of the trial

⁴ 2008 9 SCC 475

⁵ (2007) 4 SCC 415

⁶ (2017) 5 SCC 715

court cannot be interdicted and the High Court cannot supplant over the view of the trial court.

16. In view of the aforesaid, this Court is not inclined to interfere into the impugned judgment of acquittal, however, taking into consideration the overall facts and circumstances of the case, this court finds it appropriate to set aside the direction to Commissioner of Police to report to the concerned Court. This Court finds it appropriate to leave the aforesaid issue to the discretion of the concerned Higher Authorities of the Police Department, if it finds necessary, the same authority would be at liberty to proceed in accordance with law.

17. With the aforesaid modification, the instant appeal stands dismissed.

PURUSHAINDRA KUMAR KAURAV, J.

OCTOBER 11, 2022/MJ