

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

CRR-340-2019 (O&M)
Date of Decision: 31.07.2023

UNION OF INDIA

...Petitioner

Versus

HANSRAJ

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Ms. Sharmila Sharma, Senior Panel Counsel-U.O.I.
for the petitioner.

HARSH BUNGER, J.

CRM-4733-2019

This is an application seeking condonation of delay of 636 days in filing the present Criminal Revision Petition.

For the reasons mentioned in the application, the same is allowed and delay of 636 days in filing the revision petition is condoned.

Criminal Misc. Application stands disposed of accordingly.

CRR-340-2019 (O&M)

The present Criminal Revision Petition has been filed by petitioner-Union of India through Senior Divisional Security Commissioner, Railway Protection Force, DRM Office, Northern Western Railway, Jaipur Division, Jaipur; against the judgment dated 17.01.2017 passed by the Court of Additional Sessions Judge, Rewari; whereby, the appeal filed by the respondent herein (Hans Raj) against the judgment of conviction dated 01.04.2015 and order of sentence dated 03.04.2015 passed by learned Chief Judicial Magistrate, Rewari, has been allowed and respondent-Hans Raj, has been acquitted in case FIR No.3 dated 27.10.2011, registered under Section 3

of the Railway Property (Unlawful Possession) Act, 1966 (here-in-after referred to as 'the Act, 1966') at Police Station RPF, Rewari.

2. Briefly on 27.10.2011, gangmen Jaidev Chauhan and Raghunath were on duty and inspecting the railway line, where they found pendrol clips missing from the railway line from several places. During patrolling duty, they saw one person, who had been taking some heavy articles on his shoulder in a plastic bag. The said person was caught and in the presence of witnesses, he was checked, from whom, 30 pieces of pendrol clips (railway property) were recovered. On inquiry, he told his name as Hansraj. Accordingly, the afore-said case FIR was registered and Hansraj (respondent) was arrested. Upon completion of investigation, challan was presented in the Court.

3. On being charged under Section 3 of the Act, 1966, respondent-Hans Raj herein pleaded not guilty and claimed trial.

4. In support of its case, the prosecution examined the following witnesses :-

PW1	Amit Kumar SSE, Railway Police
PW2	SI Sunil Kumar, RPF, Rewari
PW3	Ramesh son of Sh. Ram Lal, Senior Supervisor, Railways Khalilpur
PW4	Jaidev Gangmate
PW5	Reghunath son of Ratti Ram track man
PW6	HC Balwan Singh
PW7	C. Suresh Kumar

5. Upon closure of prosecution evidence, the statement of the respondent-accused was recorded under Section 313 of the Cr.P.C., wherein all the incriminating material against him was put to him; however, he pleaded

innocence. The Court of learned Chief Judicial Magistrate, Rewari, convicted the respondent-accused (Hans Raj) under Section 3 of the Act, 1966, vide judgment of conviction dated 01.04.2015 and vide a separate order of sentence dated 03.04.2015, the respondent herein was sentenced to undergo rigorous imprisonment for a period of one year and also to pay a fine of Rs.1,000/-.

6. Being dis-satisfied, the respondent herein filed a criminal appeal before the Court of learned Additional Sessions Judge, Rewari.

7. After appreciating the evidence/material placed on the record, the learned Additional Sessions Judge, Rewari, vide its judgment dated 17.01.2017 set aside the judgment of conviction and order of sentence passed by the trial Court and acquitted the respondent herein of the charges framed against him.

8. Accordingly, the present Criminal Revision Petition has been filed before this Court.

9. Learned counsel for the petitioner submits that the learned lower Appellate Court has erred in law and fact in reversing the judgment of conviction. It is submitted that the impugned judgment passed by the learned Additional Sessions Judge, Rewari, is based on conjectures and surmises and the same has been rendered by completely misreading the evidence placed on the record. It is submitted that learned Additional Sessions Judge, Rewari has failed to consider that the respondent was apprehended on the spot and the stolen property was recovered from his possession. The said stolen property was railway property and even the respondent had suffered a confessional statement also. It is submitted that the ingredients of the offence under Section 3 of the Act, 1966, were duly fulfilled in the instant case, however, the learned Court below had wrongly acquitted the respondent vide impugned judgment

dated 17.01.2017 passed by learned Additional Sessions Judge, Rewari. It is, therefore, prayed that the instant revision petition may be allowed and the accused person may be punished in accordance with law.

10. I have heard learned counsel for the petitioner and perused the paper-book with her able assistance.

11. It is well settled that scope of revisional jurisdiction of this Court is quite limited and the Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment under challenge.

12. Hon'ble Apex Court in ***Johar and others v. M/s Mangal Prasad and another, 2008(3) SCC 423*** while dealing with the scope of revisional jurisdiction, has observed as under:-

"17. The approach of the High Court to the entire case cannot be appreciated. The High Court should have kept in mind that while exercising its revisional jurisdiction under section 397 and 401 of the Code of Criminal Procedure, it exercises a limited power. Its jurisdiction to entertain a revision application, although is not barred, but severally restricted, particularly when it arises from a judgment of acquittal."

13. The factum of powers of the revisional court dealing with the revision against acquittal being extremely limited was reiterated by the Hon'ble Supreme Court in the case of ***K. Ramachandran v. V.N. Rajan & Anr. 2010(5) RCR (Criminal) 237***, wherein it was held as under:-

"This question has been considered in the celebrated judgment of Akalu Ahir & Ors. v. Ramdeo Ram [(1973) 2 SCC 583], where, after considering the judgments of D. Stephens v. Nosibolla [1951 SCR 284], Logendranath Jha v. Polailal [1951 SCR 676], K.C. Reddy v. State of Andhra Pradesh [(1963) 3 SCR 412] and Mahendra Pratap Singh v. Sarju Singh [(1968) 2 SCR 287]

this Court came out with categories of case which would justify the High Court in interfering with the finding of acquittal in revision:

- "(i) Where the trial Court has no jurisdiction to try the case, but has still acquitted the appellant- accused;*
- (ii) Where the Trial Court has wrongly shut out evidence which the prosecution wished to produce;*
- (iii) Where the appellate Court has wrongly held the evidence which was admitted by the Trial Court to be inadmissible;*
- (iv) Where the material evidence has been overlooked only (either) by the Trial Court or by the appellate Court; and*
- (v) Where the acquittal is based on the compounding of the offence which is invalid under the law."*

Of course, these categories were declared by this Court to be illustrative and this Court observed that other cases of similar nature could also be properly held to be exceptional in nature where the High Court could justifiably interfere with the order of acquittal. In this very judgment though in paragraph 10, this Court did not generally approve of the appreciation of evidence by the Trial Court Judge and held it to be not perfect or free from flaw and further observed "the Court of appeal may be justified in disagreeing with the conclusion, but it does not follow that on revision by a private complainant, the High Court is not entitled to reappraise the evidence for itself as if it is acting as a Court of appeal and then order a re-trial."

14. In the case of ***Hydru v. State of Kerala, {2004 (13) SCC 374}***, the Hon'ble Supreme Court has held as under:-

"3. From a bare perusal of the impugned order, it would appear that the High Court upon reappraisal came to a conclusion different from the one recorded by the appellate court. It is well settled that in revision against

acquittal by a private party, the powers of the Revisional Court are very limited. It can interfere only if there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate court. If upon reappraisal of evidence, two views are possible, it is not permissible even for the appellate court in appeal against acquittal to interfere with the same, much less in revision where the powers are much narrower. No procedural irregularity has been found by the High Court in the order of the Sessions Court whereby the appellant was acquitted. Therefore, we are of the view that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional powers, as such the same is liable to be interfered with by this Court".

15. Thus, it is apparent that re-appraisal of evidence is not possible in a revision against acquittal unless and until there are some procedural irregularities or illegalities, which has been pointed out by the complainant/petitioner so as to justify the exercise of revisional powers by this Court.

16. In the case of ***Bindeshwari Prasad Singh @ B.P. Singh and others v. State of Bihar (Now Jharkhand) and another, 2002(4) RCR (Criminal) 61***, it was laid down by the Apex Court that the High Court will ordinarily not interfere in revision against an order of acquittal except in exceptional cases, where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice.

17. In the case of ***Satyajit Banerjee v. State of West Bengal, 2005(1) RCR (Crl.) 723***, the Apex Court laid down that revisional jurisdiction, at the instance of the complainant has to be exercised by the High Court only in very exceptional cases, where the interest of public justice requires interference for

the correction of a manifest illegality or the prevention of gross miscarriage of justice.

18. Coming to the case in hand, the learned lower Appellate Court, while acquitting the respondent, had returned the following findings :-

11. The material witnesses examined by the prosecution are PW4 Jai Dev, gang mate and PW5 Raghunath, track man. However both these witnesses have given different version of the alleged recovery. There have been material discrepancies in the statement made by these witnesses which itself raise a doubt on the prosecution story. PW4 Jai Dev gang mate stated that he himself did not make any phone call to the police. No independent witness was called at the spot to join the investigation. He could not tell as to on how many papers his signature was obtained by the police. He also could not tell as to what was written on those papers. He simply signed the papers at the asking of the police officer. He also could not tell as to how many police men were present at the spot. He stated that his signatures were obtained by the police in police station.

12. PW5 Raghunath stated that the phone call was made to the police station by one Jai Dev. However said Jai Dev has neither been cited as a witness nor examined by the prosecution. He also stated that no independent person was called at the spot. He also stated that the police obtained his signatures on blank papers. He could not tell as to what was written on those papers. He also could not tell as to when his statement was recorded by the police. PW1 Amit, SSC admitted during his cross examination that no theft took place in his presence. He also nowhere stated that any recovery of the stolen railway property was effected from the accused in his presence. He simply got registered the FIR in this case.

13. PW2 SI Sunil Kumar simply proved his investigation. During his examination he stated that information was received by him at about 1.15 PM. He went to the spot on foot. He also stated that no public witness was called by him at the spot at the time of recording of the disclosure statement of the accused. He also stated that the theft did not take place in his presence. PW3 Ramesh son of Shri Ram Lal stated that the accused was apprehended by Raghunath and Jai Dev. However as already observed that PW4 Jai Dev and PW5 Raghunath gave different version of the alleged theft and the recovery. PW3 Ramesh also stated during his cross examination that he did not personally know the accused prior to the day of his arrest. Police obtained his signatures on 3-4 papers. He could not tell as to when the disclosure statement of the accused was recorded and as to what was stated by the accused in the disclosure statement.

14. PW6 HC Balwan stated that he himself did not arrest the accused. No independent witness was joined to the investigation at the time of recording of disclosure statement of the accused and at the time of alleged recovery from his possession. PW7 constable Suresh Kumar assisted the investigating officer during investigation. He could not tell as to who informed the investigating officer. He also admitted that no local person or independent witness was joined to the investigation.

15. It is now well settled that prosecution is required to prove each and every ingredient of the offence alleged to have been committed by the accused. The accused is only required to show that the defence version is probably, where two views are possible, the view which favours the accused ought to be applied.

16. In view of the observations made above, this court is of the view that the judgment of conviction dated 1.4.2015 and order of sentence dated 3.4.2015 passed by

the learned trial court can not be sustained and is accordingly set aside. The accused is held entitled to benefit of doubt. He stands acquitted of the charge for which he faced trial. His bail bonds stand discharged. The amount of fine deposited by the appellant/accused before the trial court be refunded to him on expiry of the period of filing appeal/revision. His bail bonds stand discharged, The trial court record be sent back. The appeal file be consigned to the record room after due compliance.”

19. I have gone through the afore-said findings returned by the lower Appellate Court; however, I do not find any illegality or infirmity with the impugned judgment(s)/order(s) apparent on the face of the same, which may call for any interference by this Court, while exercising its revisional jurisdiction. There is nothing on the record to show that learned Additional Sessions Judge, Rewari, has exceeded his jurisdiction or refused to exercise jurisdiction, while passing the impugned judgment/order. The impugned judgment/order is certainly not perverse or having been passed in violation of settled principles of criminal jurisprudence. There is no defect apparent on the face of such judgment. Rather is it well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law.

20. Even otherwise, if we see merits of the case, the material witnesses in the case were PW4 Jaidev and PW5 Reghunath. Learned lower Appellate Court has returned a finding that both the said witnesses have given a different version of the alleged recovery and there were material discrepancies in their statements. Accordingly, it has been held that the same raises a doubt in the prosecution story. Learned counsel appearing for the petitioner has not referred to any material to dis-lodge the aforesaid findings

returned by the lower Appellate Court. Accordingly, I am in agreement with the findings returned by the Lower Appellate Court.

- 21. No other point has been urged.
- 22. Therefore, there is no merit in the present criminal revision petition and the same stands dismissed accordingly.
- 23. All pending application/s (if any) shall stand closed.

July 31st, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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