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

**CRA-S-1493-SB-2008**
**Reserved on:02.05.2023**
**Date of Pronouncement:08.05.2023**

State (U.T. Chandigarh) …Appellant

vs.

Paramjit Kumar @ Paramjit Singh …Respondent

**Coram : Hon'ble Mr. Justice N.S.Shekhawat**

Present : Ms. Sudha Singh, Advocate for
Mr. Yashwant Singh Rathore, APP. U.T., Chandigarh.

Mr. Aman Kashyap, Advocate
for the respondent.

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**N.S.Shekhawat J.**

1. Feeling aggrieved of the judgment dated 03.05.2007 passed by learned Additional Chief Judicial Magistrate, Chandigarh, whereby the respondent has been acquitted of the charge, the State of Union Territory, Chandigarh, has preferred the present appeal before this Court. The learned trial Court, while referring to the various inconsistencies in the evidence led by the prosecution, held that the prosecution had miserably failed to prove the charge against the respondent for the offence punishable under Section 477-A of the Indian Penal Code (for short ' IPC') and acquitted the respondent/accused.

2. The story of the prosecution, as it emerges from the report under Section 173. Cr.P.C. is that a complaint was moved by Jagdish Lal Ahuja,

complainant, who was running a proprietorship firm under the name and style of Jagdish Fruit Agency in Sector-26, Chandigarh since long. It was alleged that Paramjit Singh, respondent/accused had been working with him in his business premises and was maintaining the accounts of his firm and was also receiving/disbursing cash, while performing his duty as a cashier. Since, the father of the accused was known to him, he trusted the accused and the respondent used to receive cash in connection with the firms' daily sales, supplies and purchases of fruit etc. The incidental and other expenses were made by the accused for and on behalf of the firm and the complainant trusted and was dependent on the accused, who was entrusted with the work of cash receipts and expenditure, on behalf of the firm of the complainant. It was also his duty to maintain and prepare necessary record, regarding to the cash and it was handled by him. Apart from that, the accused was also having the custody of the record, which was prepared by him. On 14.04.1998, a shortfall of Rs.2,76,098.94 was noticed, when the record relating to the balance of cash was checked at the financial year ending with 31.07.1997 and it was apparent that the accused had not only embezzled the amount, but also falsified the accounts intentionally in order to cheat the complainant and had also embezzled the said amount. The accused was called and was asked to explain the position, but he failed to do so. Apart from that, certain kacha diary type books, prepared by the accused during the period when he stayed in the firm of the complainant, were also found and finally, it was discovered that an amount of Rs.2,76,098.94 was not accounted for and the accused had converted the same to his own use and cheated him. Apart from that, the respondent/accused had also caused disappearance of the record, pertaining to the earlier periods. The complainant tried to persuade the accused to reveal the full facts, but he was unavailable and had not attended his work since 15.04.1998 and also did not explain the financial position. Consequently, it was prayed that legal action may be taken against the respondent/accused in view of the fact that he had caused financial harm wrongfully to the present complainant and had also cheated and committed the act of defalcation and had also destroyed the records to cover up his misconduct. Consequently, the respondent was liable to be prosecuted by the police.

3. With these broad submissions, the FIR was got registered by the complainant and the investigation formally commenced. After completion of necessary investigation, the challan under Sections 408, 477-A IPC was presented by the police and the copy of same was supplied to the learned counsel representing the respondent, in compliance of the provisions of Section 207 of Cr.P.C. After considering the material filed by the Investigating Agency, the learned trial Court held that the offence under Section 477-A IPC was made out against the accused and he was charge-sheeted for the same. The accused pleaded his innocence and claimed trial.

4. In order to prove the charge, the prosecution examined four witnesses i.e. PW-1 D.S. Baloria, Tehsildar, Estate Office, Chandigarh, PW-2 Jagdish Lal Ahuja-complainant, PW-3 Vinod Kumar and PW-4 Inspector Maghi Ram-Investigating Officer. The prosecution examined PW-1 D.S. Baloria, Tehsildar, Estate Office, U.T., Chandigarh, who was posted as Secretary, Market Committee, Sector-26, Chandigarh in September, 1999 and had produced

certain official record. The prosecution further examined PW-2-Jagdish Lal Ahuja, complainant in the present case, who stated that Paramjit Singh, respondent/accused worked with him for a long time and had also worked under him in the year 1997 and 1998. The respondent was working with the complainant and was looking after his business. The respondent used to receive/disburse cash, daily sale and supply and was also making other expenses. On 14.04.1998 on routine checking, he found that there was a cutting and erasing in the record pertaining to the balance of cash. Thereafter, he deputed Vinod Kumar to cross-check the accounts which were maintained by the accused. On checking, Vinod Kumar found and disclosed to him that there was an embezzlement of Rs.2,76,098.94 in the accounts, which were being maintained by the accused for a period from 01.04.1997 to 31.07.1997. He stated that he had seen the complaint Ex.PW-2/A in the Court file, which was filed by him against the accused and the same was bearing his signatures at point 'A'. In his cross-examination, he stated that he was an illiterate person, so he did not check the papers of the period dated 14.04.1998. He did not personally check the record, but it was checked by Vinod Kumar. Vinod Kumar did not give him in writing about the alleged misappropriation in the record. Vinod Kumar checked the books and at his instance, he made a complaint to the police regarding the misappropriation. He and Vinod Kumar handed over the record to the police, but he did not remember whether any record was returned to him. He also did not remember whether he had handed over the record in one lot. He did not remember the exact date, when he lodged the complaint and stated voluntarily that the same was lodged after 5 to 10 days after 14.04.1998.

He did not remember the date when he handed over the record to the police. He could not tell whether he handed over the record to the police on the same day. Vinod Kumar used to check the books written by the respondent and Vinod Kumar never told him that there was some discrepancy in the record in the account books maintained by the respondent. He had told Vinod Kumar that he had faith with the accused, because he was the son of his ex-employee. He could not tell whether the complaint Ex.PW2/A was made by him or not, since it was bearing his signatures, then it might be the complaint lodged by him. He did not know whether he had handed over the cash receipt books to the police or not. He did not remember whether the record shown to him was complete record, which he handed over to the police. He did not remember whether he signed any document at the time of handing over the record to the police. Whatever was mentioned in the books was conveyed to him by Vinod Kumar. He had not checked the account books as he had no knowledge of accountancy. He further stated that the entries in the diary, which were in lead pencil, were made by the respondent.

5. The prosecution further examined PW-3 Vinod Kumar, who was working as an accountant in the proprietorship firm owned by the complainant. He stated that he had also handed over the photocopies of cash book from the period 01.09.1997 to 14.04.1998 to the police and the photocopies were written by the respondent and he identified his handwriting and there was no embezzlement in the photocopies Mark 1 and Mark-222. In his cross-examination, he stated that he was working as an Accountant in the said firm and the accounts used to be maintained in his presence. He stated that account

books were prepared by him and there was a difference in the account. The accused was the cashier. He further admitted that the respondent did not turn up in the office from 14.04.1998 to 01.10.1998, volunteered that till date. He further admitted that this record remained in his possession from 14.04.1998 to till date. He admitted that the cash book of daily income and register were being prepared daily. He further admitted that he had handed over the cash receipt book mentioned at Sr. Nos.2 and 3 of Ex.PW2/C. The said cash receipt books were not in the record, as seen by him on that day in the Court. He further admitted that the cash receipt book mentioned at Sr. Nos.2 and 3 in Ex.PW2/C pertains to the period from 01.04.1997 to 31.07.1997. There was no other cash book except Ex.P1 and Ex.P2. He stated that the record was given in the month of October/November, 1998 and he had accompanied the owner at the time of handing over the record to the police. It was also possible that the record was given in the month of January, 1999 also. He admitted that there was no alteration in the figures given in the record Ex.P1 and Ex.P2. He admitted that the entries Ex.P1 and Ex.P2 and there were entries with pencil. He did not point out to the owner that these books were being written with pencil as these books were never shown by the cashier/accused. He used to check daily roznamcha and the receipt books. He could produce the receipt books, which he used to check daily. It was a private concern and he had never given in writing to the owner about the alteration and it was told verbally. There was one receipt book, which was being prepared besides the documents Ex.P1 to Ex.P3. He could produce the original record. He had not produced the record pertaining to the period from 01.09.1997 to 14.04.1998 as the same was not demanded by the police. The prosecution further examined PW-4 Inspector Maghi Ram, who was the Investigating Officer of the present case. In his cross-examination, he admitted that he did not take into possession any document regarding the appointment and duties of the accused, though it was in possession of the complainant. Whatever the complainant produced, he took into possession during investigation. The complainant himself produced the record, which was taken into possession through recovery memos Ex.PW2/B and Ex.PW2/C. He admitted that the documents mentioned at Sr. Nos.2 and 3 in Ex.PW2/C were not on the judicial file and these records might be in the malkhana. However, there was no document to show that these documents were deposited in the malkhana. He did not take into possession any document from the accused. Jagdish Lal Ahuja handed over the record to him. When Jagdish Lal Ahuja, complainant handed over the record to him, Vinod Kumar was not present with him. He further admitted that on 30.04.1998, when the complainant filed the complaint, no document of the concern was given by the complainant to the police.

6. After closure of the prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. The respondent/accused stated that he had been falsely implicated in the present case and no case was made out against him. He had not embezzled any amount nor made any addition/alteration in the accounts as he had no concern with the accounts. He opted to lead defence evidence, but he did not examine any witness to prove his innocence.

7. I have heard learned counsel for the parties and with their able assistance, I have carefully perused the trial Court record.

8. Learned State counsel vehemently argued that the learned trial Court completely ignored the substantial evidence led by the prosecution against the respondent/accused. The learned trial Court did not take into account, the account books, in which interpolation/alteration/tampering had been done and were found in the custody of the respondent. The learned trial Court failed to appreciate that the respondent was employed as a cashier in the firm of the complainant and was Incharge of handling cash, receipts and expenditure on behalf of the firm and was maintaining the said record in regular course of business. The learned trial Court further failed to appreciate that PW-3 Vinod Kumar, another employee of the firm had duly proved the charge as well as identified the handwriting of the respondent. Even from the statement of PW-3 Vinod Kumar, the offence was conclusively proved against the respondent and the misappreciation of the said evidence has led to grave miscarriage of justice, which deserves to be corrected by this Court by setting aside the judgment of acquittal. Even the learned trial Court failed to appreciate that the complainant got a chance to appear before the learned trial Court after several years and after so many years, the human memory fades and being an illiterate person, certain minor inconsistencies appeared in the testimony of PW-2 Jagdish Lal Ahuja and the same should have been ignored by the learned trial Court. Thus, the impugned judgment is based on mis-appreciation of evidence and law.

9. The submissions made by learned State counsel have been refuted by learned counsel appearing on behalf of the respondent and while referring to the findings recorded by the learned trial Court, he argued vociferously that the impugned judgment is based on correct appreciation of facts and evidence on record. The statements made by PW-2 Jagdish Lal Ahuja and PW-3 Vinod Kumar are so inconsistent that the both could not co-exist and expose the falsehood of the entire prosecution case. In fact, the entire record was manipulated by Vinod Kumar PW-3 himself and the burden was shifted on the present appellant who had no concern with the addition/alteration / interpolation in the record. Learned counsel further contended that even the prosecution wanted to rely upon certain documentary evidence, however, neither the said documentary evidence could be proved nor the handwriting of the respondent was proved on record to show he had actually committed the manipulations / falsification of the account books. With these submissions, he prayed for upholding the impugned judgment passed by the learned trial Court.

10. From a perusal of the complaint, it transpires that the main charge against the respondent is that on 14.04.1998, on routine checking of the record relating to the balance of cash shown at the closure of the financial year ending with 31.07.1997, a shortfall of Rs.2,76,098.94 was noticed and it was detected that the respondent/accused defalcated in respect of the said amount and deliberately falsified the accounts in order to cheat the complainant by embezzling the said amount. The prosecution examined PW-3 Vinod Kumar to prove the said charge mainly. However, PW-3 Vinod Kumar admitted in his cross-examination that the cash receipt book mentioned at Sr. Nos.2 and 3 in

Ex.PW2/C pertained to the period from 01.04.1997 to 31.07.1997. There was no other cash book except Ex.P1 and P2. He further admitted that they had handed over the cash receipt book mentioned at Sr. Nos.2 and 3 of Ex.PW2/C and the said cash receipt books were not there in the Court record, as seen by him on that day in the Court. Similarly, PW-4 Inspector Maghi Ram, who was the Investigating Officer of the case, also admitted in his cross-examination that the complainant himself produced the record, which was taken into possession through recovery memos Ex.PW2/B and Ex.PW2/C. He further admitted that the documents mentioned at Sr. Nos.2 and 3 in Ex.PW2/C were not on the judicial file. He stated that this record might be in the malkhana, however, there was no document to show that these documents were deposited in the malkhana. Thus, it is apparent that the basic documents which were being relied upon heavily by the prosecution, were not on the judicial file as admitted by PW-3 Vinod Kumar and PW-4 Inspector Maghi Ram.

11. Apart from that, the learned trial Court rightly held that in his complaint, the complainant had nowhere mentioned that the alteration in the records of the accounts maintained by the respondent and the embezzlement of amount of the complainant firm were disclosed by Vinod Kumar PW-3; whereas in his examination- in-chief, he had deposed that the said alteration in the account books and embezzlement of funds of the complainant by the respondent was detected and disclosed by Vinod Kumar. Apart from that, it is also apparent that the complainant did not remember the date, when he handed over the record to the police. He further deposed that he could not tell as to whether the complaint Ex.PW2/A was made by him or not. However, since it

bears his signatures, the same might be lodged by him. Apart from that, from a perusal of the testimony of PW-2 Jagdish Lal Ahuja, it is apparent that he was not aware of the exact contents of the complaint nor the details of the alleged offence committed by the respondent, rather heavily relied upon the testimony of PW-3 Vinod Kumar, which runs contrary to the version put-forth by the complainant. Thus, the version of the prosecution was so inconsistent that it is difficult to believe the story of the prosecution.

12. Even from a testimony of PW-3 Vinod Kumar, it is apparent that the said witness was correctly disbelieved by the learned trial Court. He stated that he joined the complainant firm in the year 1992 and at that time, the accused was working in the said concern. He was working as an accountant in the firm and accounts used to be maintained in his presence. He again said that the account books were prepared by him and there was a difference in the account. The accused was a cashier. He stated that the cash book of daily income and return were being prepared by him daily. He further admitted that he had not noticed any misappropriation/discrepancy in the account books before 14.04.1998. Still further, he was incharge of the accounts daily and was posted regularly in the said firm. Even he was monitoring the complete accounting of the firm on day-to-day basis. Consequently, the story of the prosecution that the embezzlement was done by the respondent only, could not be believed. Apart from that, he admitted that the entries Ex.P1 and P2, which were the main entries relied upon by the prosecution, were with pencil. Neither the said entries were on record, nor the same could be proved. He further

admitted that he used to check the daily roznamcha and receipt books and consequently, the story of the prosecution seemed to be improbable.

13. It has been held by the Hon'ble Supreme Court in the matter of **"Bhaskarrao and others Vs. State of Maharashtra", 2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228** as follows:-

> *"14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in **Tota Singh and Anr. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974** -*
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> > *"The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappreciation, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a re-appreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The*

*jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."*

*15. In* ***Ramesh Babulal Doshi v. State of Gujarat, 1997(3) RCR (Criminal) 62 : 1996 CriLJ 2867****, this Court observed:*

*"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above*

*question in the negative the order of acquittal is not to be disturbed."*

14. From a close scrutiny of the impugned judgment, it is evident that the learned trial Court has properly appreciated the evidence. The impugned judgment passed by the learned trial Court is based on sound reasons and there does not seem to be any illegality or perversity in the appreciation of the evidence by the learned trial Court. Apart from that, the prosecution has miserably failed to prove any factual or legal error in the assessment of evidence made by learned trial Court, insofar as the acquittal of respondent/accused is concerned. The view taken by the learned trial Court is a reasonably possible view and the learned Court has given cogent, convincing and satisfactory reasons while recording the judgment of acquittal and the impugned judgment does not suffer from any legal infirmity, warranting any kind of interference by this Court.

15. As a sequel, the impugned judgment dated 03.05.2007 passed by learned Additional Chief Judicial Magistrate, Chandigarh is ordered to be upheld and the present appeal is dismissed being devoid of merits.

16. Pending applications, if any, are also disposed off, accordingly.

17. The trial Court record be sent back.

**(N.S.SHEKHAWAT)**
**JUDGE**

**08.05.2023**
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Whether speaking/reasoned : Yes
Whether reportable : Yes