1629 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CRA-S-1891-SB-2007
Reserved on: 21.02.2023
Date of Pronouncement: 11.04.2023

Ashok Kumar …Appellant

vs.

Radhey Sham and Anr. …Respondents

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

Present : Mr. Vinod K. Kataria, Advocate
for the appellant.

Mr. Achin Gupta, Advocate
for respondent No.1.

Mr. Vipin Pal Yadav, Additional Advocate General, Punjab.

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N.S.Shekhawat J.

By way of the present appeal, the appellant/complainant has challenged the judgment dated 24.01.2007, passed by the Court of Sh. M.S Virdi, learned Additional Sessions Judge, Faridkot, whereby he had reversed the judgment of conviction and order of sentence dated 07.11.2005, passed by the Court of Additional Chief Judicial Magistrate, Faridkot.

Vide the judgment of conviction and order of sentence dated 07.11.2005, the learned Additional Chief Judicial Magistrate Faridkot convicted respondent No.1 for the offence punishable under Section 406 of IPC and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2000/- along with default stipulation. The respondent No.1/accused preferred an appeal before the Court of Learned Sessions Judge, Faridkot and vide the impugned judgment, the learned Appellate Court reverse the judgment passed by the Trial Court. Assailing the impugned judgment passed by the Appellate Court, the appellant has preferred the instant appeal before this Court.

The brief facts of the case are that Ashok Kumar, appellant/complainant and Radhey Shyam accused/respondent No.1 were the members of a Chit Fund Committee and in all, there were ten members of the Committee. On 13.02.1998, the respondent No.1 had taken a sum of Rs.1,50,000/- from the appellant towards ten instalments of Chit Fund Committee and promise to return the same on expiry of the term of ten months and had also executed an *Amanatnama* in his favour in his own hand. When the period of Committee expired, the appellant requested the respondent No.1 to return the amount, but the accused tried to put off the matter on one pretext or the other and ultimately refused to return the same to the appellant. On 18.11.1999, the appellant sent a registered notice to respondent No.1, calling upon him to return the said amount, but the respondent No.1 did not reply to the same and ultimately a complaint under Section 406 IPC was filed by the appellant before the Learned Trial Court.

After the respondent No.1 was summoned under Section 406/420 IPC by the Illaqa Magistrate, the appellant adduced pre-charge evidence and appeared himself as PW1. He supported the version as mentioned in the complaint. Vipan Kumar was examined as PW-2, who had accompanied the appellant to the respondent to demand the *Amant* (entrusted amount), but the respondent did not pay any heed to them. The appellant further examined PW-3 Anil Kumar Gupta, an Handwriting Expert, who compared the disputed writing and signatures alleged to be that of Radhey Shyam with his specimen writing and signatures and found the same to be one and the same person and he proved his report, photo charts and the enlargments of the originals as Exs.P7 to Exs.P21.

After taking into account the pre-charge evidence, the learned Trial Court ordered framing of charge under Section 406 IPC against the accused and he pleaded not guilty and claimed trial.

After the post-charge evidence, the entire incriminating evidence was put to the accused in the shape of the statement under Section 313 Cr.PC and he claimed his innocence. The accused examined Sanjiv Sharma, Document and Handwriting Expert as DW-1.

Learned counsel for the appellant assailed the impugned judgment by submitting that the appellant and respondent were the members of Chit Fund Committee and in all, there were ten members. The respondent No. 1 had taken a sum of Rs.1,50,000/- towards ten instalments of the Chit Funds Committee and promised to return the same. Even respondent No.1 had executed an *Amanatnama* (entrustment deed) in favour of the appellant and later on, he refused to honour the same, inspite of receipt a legal notice dated 18.11.1999. Learned counsel further contended that it was apparent from the prosecution evidence that the respondent No.1 had written and sign the said *Amanatnama*, which was completely ignored by the learned Appellate Court. Learned counsel further submitted that the appellate Court had mis-interpreted the document Ex.P1 dated 13.02.1998 i.e *Amanatnama*, which was the most crucial document was proved the offence against respondent No.1 to be held. Learned counsel further contended that the ingredients of the offence under Section 406 were complete in the instant matter and the impugned judgment is legally unsustainable. Countering the said submissions, learned counsel for respondent No.1 submitted that the filing of mis-conceived criminal proceedings was used as a bargaining trick to pressurize and threaten the respondent No.1 to enter into a settlement. Even though this case involved civil liability, it was given criminal contours with the object of pressuring the respondent No.1 and subject him to harassment. The Trial Court has recorded well reasoned findings and the same are liable to be upheld by this Court.

I have heard learned counsel for the parties and I agree with the submissions made by learned counsel for the respondent No.1. Learned counsel for respondent No.1 has rightly pointed out that the whole case revolves around the interpretation of a word in the writing Ex.P1 however, it would not make much of a difference if the word is called "amount" or "Amanat". Even if it is considered to be Amanat, it would only be a breach of contract by respondent No.1, which would be a civil liability. Even if it is assumed that the appellant had given a sum of Rs.1,50,000/- to the respondent No.1 and he had not returned the same inspite of a legal notice, the present appellant had the liberty of filing a civil suit against the respondent No.1, which was not done by the appellant. There was no question of any criminal mis-appropriation in the present case and the learned Trial Court has rightly held that no offence is made out under Section 406 IPC.

It has been held by the Hon'ble Supreme Court in the matter of ***M/s Indian Oil Corporation Vs. NEPC India Ltd., AIR 2006 SC 2780: 2006(3) RCR (Criminal) 740: as follows:-***

"18. In ***Chelloor Mankkal Narayan Ittiravi Nambudiri v. State of Travancore, Cochin [AIR 1953 Supreme Court 478], this Court held:***

> *"-- to constitute an offence of criminal breach of trust, it is essential that the prosecution must prove first of all that the accused was entrusted with some property or with any dominion or power over it. It has to be established further that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal in violation of a direction of law or legal contract, by the accused himself or by someone else which he willingly suffered to do.*
> *It follows almost axiomatically from this definition that the ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit."*

[Emphasis supplied)

In ***Jaswantrai Manilal Akhaney v. State of Bombay [AIR 1956 Supreme Court 575]***, this Court reiterated that the first ingredient to be proved in respect of a criminal breach of trust is "entrustment'. It, however, clarified:

> *" ---- But when Section 405 which defines "criminal breach of trust" speaks of a person being in any manner*

> *entrusted with property, it does not contemplate the creation of a trust with all the technicalities of the law of trust. It contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening of a certain event."*

Still further, now adverting to the facts of the present case, it would be relevant to refer to the testimony of the appellant/complainant, who had appeared as PW1. PW-1 Ashok Kumar, appellant stated that the name of his firm was M/s Lachman Dass Aggarwal and Sons. He was the sole proprietor of the firm. His firm was dealing in foodgrains and pacca commission agents. He did not know whether Radhey Shyam, respondent No.1 gave a cheque on 02.12.1998 to his firm. The name of the firm of respondent No.1 was Sham Sales Corporation and that firm was dealing with his firm also. He further admitted that he had not deducted Rs.1,00,000/- on 28.12.1998, while making payment through cheque to Sham Sales Corporation, as he had an apprehension that Radhey Shyam will file a suit against his firm because the amount of Rs.1,00,000/- was given to his firm vide the cheque and that amount had to be returned by way of cheque. He further admitted to be correct that the Committee was to last till 13.12.1998.

Consequently, the statement of PW-1 Ashok Kumar, appellant itself exposes the falsehood of his entire case. As per the appellant/complainant, the Committee was for ten months i.e upto 13.12.1998 and thereafter, respondent No.1 was under a legal obligation to return an amount of Rs.1,50,000/- to the appellant/complainant. However, on 28.12.1998, the appellant/complainant returned an amount of Rs.1,00,000/- by way of cheque to Sham Sales Corporation, solely owned by the respondent No.1. This clearly shows that there were financial transactions between both the firms. Secondly, if the respondent No.1 was to pay a sum of Rs.1,50,000/- to the appellant on 13.12.1998, the appellant would not have returned a sum of Rs.1,00,000/- on 28.12.1998 to the appellant. Thus, it is apparent that there were financial transactions between both the parties and the case set up by the present appellant is liable to be disbelieved. Even otherwise at the most, it was a purely civil dispute arising out of a business relationship/contractual relationship between the parties and cannot be permitted to be converted into a criminal offence to get the favourable results at the earliest.

Even otherwise, the law is well settled if the main ground on which the trial Court has based its order acquitting the accused, is reasonable and plausible and the same cannot be entirely and effectively be dislodged or demoslished, the High Court should not disturb the order of acquittal. However, the interference by the High Court can be permitted only if the Lower Court had recorded such conclusions, which could not have been possibly arrived at by any Court acting reasonably and judiciously. It has been held by the Hon'ble Supreme Court in the matter of ***Bhaskar Rao and others Vs. State of Maharashtra AIR 2018 SC 2222 :2018 (5) RCR (Criminal 288) 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. Vs. State of Punjab, 1987 (2) RCR (Criminal) 35:1987 CriLJ 974-***

> *" The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW-2 and PW-6 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 re-appreciation, 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 characterised 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 is the negative the order of acquittal is not to be disturbed."*

In view of the above discussion, the present appeal fails and is accordingly ordered to be dismissed. The impugned judgment dated 24.01.2007, passed by the Court of Sh. M.S Virdi, Additional Sessions Judge, Faridkot is ordered to be upheld and affirmed.

All pending applications, if any, are also disposed off, accordingly.

The Trial Court record be sent back.

(N.S.SHEKHAWAT)
JUDGE

11.04.2023
Hitesh

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