

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.1649

CRA-S-1948-SB-2007 (O&M)

Reserved on:07.02.2023

Pronounced on:.28.03.2023

State of Haryana

...Appellant

Versus

Roshan Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Ms. Sheenu Sura, DAG, Haryana,
for the appellant.

Ms. Diksha, Advocate as Amicus Curiae,
for the respondent.

N.S. SHEKHAWAT, J.

The present appeal is directed against the judgment of acquittal dated 15.02.2006 passed by the learned Additional Sessions Judge, Jhajjar, whereby the accused-respondent was acquitted of the charge under Section 408 IPC. Assailing the said impugned judgment, the appellant-State of Haryana has preferred the instant appeal before this Court.

The FIR in the instant case was lodged on the basis of a complaint moved by S.K. Jain, District Manager, CONFED, Rohtak, wherein, the complainant alleged that as per the report of the Area Manager, CONFED, Jhajjar, Roshan Lal, respondent/accused, joined the Area Office at Jhajjar on 30.12.1986 and he was working as a salesman on CONFED Retail outlet in village Dubaldhan Majra since 1990. The physical verification of the stock was

done on 31.03.1992 and the shortage of Rs.801.84 was found against him and the amount was recovered from him. As per the physical verification of the stock, the stock worth Rs.76,600.84 was with him and the stock of Rs.80,493.37 was supplied to him during the period from 01.04.1992 to 25.06.1992 against indent Nos.2752, 12756, 12762, 7947 and 12486, but the respondent/accused had deposited the sale proceeds to the tune of Rs.84,230.73 during the period from 01.04.1992 to 25.06.1992. Thus, he was given the stock of Rs.2,410.60 at the time of taking over the charge and the total shortage of Rs.70,452.78 was detected against him and according to physical verification as on 31.03.1992, stock of furniture and fixture of Rs.3,086.95 was with him, but he had given furniture and fixture of Rs.2,943.38 at the time of handing over the charge and the shortage of Rs.143.57 of furniture and fixture was also detected against him. The total shortage of Rs.70,596.35 was outstanding against him. Roshan Lal, Salesman (respondent/accused) was absconding from the office since 25.06.1992. A formal FIR was recorded against the accused on the basis of the complaint containing the above stated allegations. Various reports were taken into possession by the police during the course of investigation. The details of stock shortage, liability register, physical verification report and the letter dated 05.11.1992 were also taken into possession by the police.

During the course of investigation, on finding sufficient evidence, the accused was arrested and was produced before the Magistrate seeking his specimen hand writing vide application dated 21.04.1993. After completion of necessary investigation, the challan was presented before the Court for trial.

The learned trial Court found a *prima facie* case for the offence punishable under Section 408 IPC and the accused was charge-sheeted, to

which he pleaded not guilty and claimed trial.

The prosecution examined eight witnesses to prove the charge against the respondent/accused. The prosecution examined PW-1 Dalbir Singh, Naib Tehsildar. On 18.05.1993, he had recorded the statement of the respondent/accused, which was exhibited as Ex.PW1/A and he had signed the same. In his cross-examination, he feigned ignorance with regard to portion A to A in the statement Ex.PW1/A and could not tell as to whether this was written subsequently. Ugar Sain, Store-keeper, CONFED, was examined as PW-2, who stated that he had conducted the physical verification on 22.05.1992, in which the shortage of Rs.43,364/- was found and he had prepared the physical verification report Ex.PW2/A and he had informed the office in writing with regard to the same. In his cross-examination, he admitted that there was cutting in the report and he had not signed the same. He had conducted the physical verification all alone and he had issued the information in writing, which was not on record. S.K.Jain, District Magistrate, CONFED, was examined as PW-3. He stated that on 05.11.1992, R.C. Sharma, Sub-Manager, Jhajjar had submitted a report and as per the said report, the shortage of Rs.70,596/- was found and he had talked to Managing Director, CONFED, Chandigarh on phone and had ordered the registration of the FIR. However, in his cross-examination, he admitted that the Sub-Manager had submitted a report in his office and he had prepared his report and sent the same to the SSP. However, the report of Sub-Manager was not on the file of the case. Bhim Singh, Salesman, CONFED was examined as PW-4, who had taken the charge after the respondent-accused. Ranbir Singh, Store-Keeper was examined as PW-5. He stated that the respondent/accused was working as a salesman on

Dubaldhan Majra Branch and whatever goods were received, the same were issued as per the directions of the CONFED and the respondent/accused used to sign all the indent forms and his duty was only to supply the goods. In his cross-examination, he admitted that he did not supply the goods as per his own wish and whatever was supplied, the same was done on the orders of the Managing Director, CONFED. He further stated that he could not tell as to which goods or money were embezzled by the accused. PW-6 SI Mam Chand was the initial investigating officer and he had arrested the respondent/accused in the present case. Ramesh Chand Sharma, Assistant Manager, CONFED, appeared as PW-7. He had signed the physical verification report and the charge report and had submitted the report regarding the shortage of the stocks. He had also submitted the facts with regard to physical verification Ex.PW7/H and the charge report Ex.PW7/I. However, in his cross-examination, he admitted that he had never conducted the physical verification. Ex.PW7/A to Ex.PW7/I were prepared as per the record in the office. He further stated that he could not tell about the details of the shortage, which has been mentioned by him in his statement to the police. He could not tell about the details of the shortage. SI Hardwari Lal was examined as PW-8, who had registered the formal FIR Ex.PA.

After closure of the prosecution evidence, the entire incriminating evidence was put to the respondent in the shape of his statement under Section 313 Cr.P.C. and he stated that he was innocent and had been falsely implicated in the instant case. However, he could not attribute any motive on the part of the police to falsely involve him in the present criminal case. The accused opted not to lead any evidence in his defence.

Vide judgment of conviction dated 23.03.2001 and order of sentence dated 25.03.2001, learned Judicial Magistrate 1st Class, Jhajjar convicted the accused-respondent under Section 408 IPC and was sentenced to undergo RI for a period of three years and to pay a fine of Rs.2,000/- with default stipulation. The respondent/accused preferred an appeal and vide the impugned judgment, the learned Appellate Court acquitted the respondent. Challenging the said impugned judgment of acquittal, the State of Haryana has preferred the present appeal before this Court.

I have heard learned counsel for the parties and with their assistance, I have gone through the trial Court record carefully.

Learned State counsel submitted that the learned Appellate Court had completely ignored the material evidence on record and the settled law. There was enough oral as well as documentary evidence to prove the involvement of the respondent in the commission of crime. Even the learned Appellate Court overlooked the testimonies of PW-1 Dalbir Singh, Naib Tehsildar, Ugar Sain, Store-Keeper, CONFED, Jhajjar and PW-7 Ramesh Chander Sharma, Assistant Manager, CONFED, which conclusively proved that the respondent was party to the crime and has been wrongly acquitted by the learned trial court. The said submissions have been opposed by the learned counsel for the respondent by submitting that the learned Appellate Court had rightly observed that the prosecution had failed to prove the case on both counts i.e. entrustment as well as misappropriation. In the instant case, since neither entrustment nor misappropriation could be proved, the charge under Section 408 IPC was bound to fail. Even the impugned judgment is based on correct appreciation of evidence and each prosecution witness has been discussed in

detail by the learned Appellate Court. Thus, learned counsel of the respondent prayed for upholding the impugned judgment passed by the learned Appellate Court.

I have considered the rival submissions made by learned counsel for the parties. The parameters have been laid down by this Court as well as Hon'ble the Supreme Court in entertaining the appeal against the order of acquittal in plethora of judgments. It has been held by the Hon'ble Supreme Court in the matter of **Mahadeo Laxaman Vs. State of Maharashtra**, 2007(3) RCR (Criminal) 2010 that in an appeal against acquittal, the High Court should not interfere in the order of acquittal if on the basis of the same evidence, two views are reasonably possible – one in favour of the accused and other against him. In such a case, if the trial Court takes a view in favour of the accused, High Court should not interfere with the order of acquittal. Hon'ble the Supreme Court has held in the matter of **Mahinder Pratap Singh Vs. State of U.P.**, 2009 (11), SCC 334. as follows:-

“Having regard to the entire evidence discussed above and having carefully and closely considered the judgments of the trial Court and the High Court, it appears that the view taken by the trial Court was reasonable and plausible. It is well settled that, if, on appraisal of the evidence and on considering relevant attending circumstances it is found that two views are possible one as held by the trial Court for acquitting the accused and the other for convicting the accused; in such a situation the rule of prudence should guide the High Court not to disturb the order of acquittal made by the trial court. Unless the conclusion of the trial Court drawn on the evidence on record are found to be unreasonable and perverse or unsustainable, the High Court should not interfere with the order of acquittal. From the above discussion of the

evidence of the eye-witnesses including injured witnesses, their evidence does not at all inspire confidence and their evidence is running in conflict and contradiction with the medical evidence and ballistic expert's report in regard to weapon of offence, which was different from the one, sealed in the Police Station. The High Court has, in our opinion, disregarded the rule of judicial prudence in converting the order of acquittal to conviction. It is pertinent to notice that the order of acquittal of the appellant was passed by the rial Court on 09.10.1980. The appeal against the said order was filed by the State Government in the year 1981 which came to be allowed by the High Court by the impugned judgment dated 29.07.2005 meaning thereby that the appeal against acquittal of the appellant remained pending in the High Court for about 24 years.

Keeping in view the above stated principles of law and the evidence led by the prosecution in the instant case, this Court is of the considered view that no interference is warranted in the findings recorded by the learned Appellate Court, which after due appreciation of evidence, clearly held that the prosecution had miserably failed to prove the case on both the counts i.e. entrustment as well as misappropriation. Once the said ingredients of the offence were not fulfilled by the prosecution, the case of the prosecution was bound to fail and the respondent has been rightly acquitted by the learned Appellate Court. The document Ex.PW3/A was the basis of the prosecution case. The learned Appellate Court correctly stated that the said document was vague and it was not clear as to when the physical verification of the stock was made. It was mentioned that the stock/goods worth Rs.80,493.37 were supplied to the accused w.e.f. 01.04.1992 to 25.06.1992 against indents, but the details of sale proceeds of Rs. 84,273.73 were not mentioned. The physical verification

was allegedly done by Ugar Sain, Supervisor on 22.05.1992. However, while appearing as PW-2, Ugar Sain deposed that the shortage was found of the material worth Rs.43,364/-, whereas, as per the letter Ex.PW3/A, the total misappropriation was found to the tune of Rs.70,596.35. Further, S.K.Jain had not conducted the physical verification of the spot and he made the complaint on the basis of the report submitted by the Area Manager of the CONFED. But, the said official did not appear as a witness. Even PW-5 Ranbir Singh was unable to make a statement with regard to the shortage. Further, PW-7 had never made any physical verification of the stock nor could he lead any evidence in this regard.

The learned Appellate Court has correctly stated that the learned trial Court had drawn wrong inferences from the evidence and the prosecution had not led any evidence to that effect. In fact, the prosecution has to stand on its own legs and can never rely upon the defence led by the accused or the suggestions given by the learned defence counsel to various prosecution witnesses. In the instant case, it is also evident from the statement of PW-1 Dalbir Singh, Naib Tehsildar that he was not competent to record the statement of the accused Ex.PW1/A and even in Ex.PW1/A, there was tampering in the record. Even PW1 Dalbir Singh, Naib Tehsildar, could not tell about the alteration mark A to A in the document Ex.PW1/A. Thus, it is evident that there was tampering in the most material documents, which were heavily relied upon by the prosecution and the prosecution had failed to prove the case beyond reasonable doubt.

In view of the above discussion, I find no merit in the instant appeal and the same is hereby dismissed. Consequently, the impugned

judgment of acquittal dated 15.02.2006 passed by the learned Additional Sessions Judge, Jhajjar is ordered to be upheld and affirmed.

Pending application(s), if any, is also disposed off.

Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation for filing the appeal, in accordance with law. The trial Court record be sent back forthwith.

In the end, I record my appreciation for Ms. Diksha, learned Amicus Curiae, who had rendered her able assistance to this Court.

28.03.2023
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO