974 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1325-SBA-2006
Reserved on: 18.01.2023
Date of Pronouncement:19.01.2023

Union Territory of Chandigarh …Appellant

vs.

Poonam Raj …Respondent

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

Present : Ms. Simsi Dhir, APP. U.T., Chandigarh.

Ms. Nitika Gill, Advocate
for the respondent.

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N.S.Shekhawat J.

The present appeal has been filed against the judgment dated 04.11.2004 passed by the Court of Judicial Magistrate 1st Class, Chandigarh, whereby the respondent/accused was ordered to be acquitted of the charge framed against him under Sections 420, 468, 471 of Indian Penal Code (for short 'IPC'). The trial Court held that the prosecution had miserably failed to prove all the three offences as recited in the charge and by extending the benefit of doubt, the respondent was ordered to be acquitted. Challenging the said findings, the learned State counsel has filed the instant appeal before this Court.

The prosecution was initiated in the instant case on the basis of the complaint lodged by P.C. Dogra, Joint Chairman, Golden Forest India Limited to the police at Police Station, Manimajra, Chandigarh. As per the complainant, Poonam Raj Thakur, the accused was working as a marketing member with the company and was allotted the enrollment No.18181. While working as a marketing member of the complainant company, he had submitted investment along with the statement to the head office of the company on 10.11.1994. He also submitted a bank deposit slip of Rs.81,000/- stated to have been deposited by him in the company's account No.1821 with the Punjab National Bank, Mandi (H.P.) on 16.11.1994. But while reconciling the accounts with the Punjab National Bank, Mandi, it transpired that the accused had deposited only a sum of Rs.1,000/- and subsequently, added 8 (Eight) in figure and words and thus showed the deposit of Rs.81,000/- by interpolating the counter foil of Bank slip attached with the statement by duping the company to the tune of Rs.80,000/-. He got the original receipts issued in favour of the investor to the tune of Rs.1,000/-. Vide letter dated 13.12.1994, the Senior Manager of Punjab National Bank, Mandi also conveyed that a sum of Rs.1,000/- was deposited in cash and pay in slip was available on their record. Consequently, it was a case of cheating and fraud of Rs.80,000/- with the complainant company by forging the record, the deposit slip of Rs.1,000/- was converted into Rs.81,000/- and on the basis of this, the FIR was lodged against the accused/respondent.

After necessary investigation and other necessary formalities, the challan was presented in the Court. Finding a *prima facie* case punishable under Sections 420, 468, 471 IPC, charges were ordered to be framed, to which the accused pleaded not guilty and claimed trial.

To prove the guilt of the accused, the prosecution examined eight witnesses.

The prosecution examined PW-1, P.C. Dogra, who was the complainant in the present case. He stated that the respondent had submitted a statement dated 10.11.1994, Ex.PA to the Head Office at Chandigarh. As per the said statement, he had collected Rs.85,300/-, out of which he deducted expenses of Rs.4,275/- and had deposited a sum of Rs.81,000/- in the Bank and a receipt Ex.PB was deposited by him with the company along with the statement. On the basis of the receipts for Rs.81,000/-, issued in the name of the investors, a letter was written to the Bank for confirming the amount claimed to have been deposited in the bank by the respondent. The bank confirmed that only Rs.1,000/- was deposited by the respondent and not Rs.81,000/-. In cross-examination, he admitted that the agents of the company were issued the identity cards and the accused was issued an identity card showing him as General Manager. He did not know whether the accused had sent the statement as well as the amount at 2-3 occasions through one Mr. Rakesh, Zonal Manager in the office of Mr. Malhotra, Mandi. He further admitted that the statement Ex.PA nowhere indicates that the accused had stated to have deposited a sum of Rs.81,000/- in their account No.1821, Punjab National Bank, Mandi. He further stated that the statement itself showed the details of the investor's amount duly signed by the marketing member. He further admitted that the details of the deduction which had been stated on that day in the Court was not mentioned in Ex.PC i.e. the complaint to the police by him. He further stated that he could not say in whose hand writing No.8 and the word eighty were written in the pay in slip mentioned above. He further admitted that pay in slip as well as the counter foil was not signed by anyone. The prosecution further examined Constable Ishwar Singh as PW-2. He stated that he along with SI Bans Raj went to Mandi to verify the account No.1821 in favour of the Golden Forest and the bank officials produced the receipts Ex.PW2/A and Ex.PW2/B. He further admitted in cross-examination that Ex.PW2/A did not indicate as to who had deposited the amount of Rs.1,000/-. SI Bans Raj was examined as PW-3, who had also conducted part investigation. Mohinder Singh, Assistant Government Examiner, was examined as PW-5. He stated that in the red enclosed portion marked Q1/1, the existing figure ‘8’ at 10 thousands place is not the original figure and appeared to be a subsequent addition. Even the existing word 80 was not in the original writing and appears to have been a subsequent addition. Still further, Vijay Kumar was examined as PW-6, who had deposited the money with the complainant Company. He turned hostile and stated that he had no knowledge whether the accused persons were also known to him and had deposited the money in the Golden Forest Company. The prosecution examined M.C. Rana, PW-7 who was posted as Head Cashier in Punjab National Bank and had proved the record of the Bank. In his cross-examination, he admitted that on pay in slip, there is a column for signatures of the person, who deposits the amount in the bank. He further admitted that the pay in slip Ex.PW2/A did not bear the signatures of depositor in the column made and he did not know as to who had deposited the amount of Rs.1,000/- through Ex.PW2/A. He did not know even who had filled in that pay in slip. He admitted that as per their stamp on the pay in slip, the said amount was received on 16.11.1994, whereas the date of payment on the slip was 14.11.1994. He did not recognize the respondent, as many persons used to come to their bank for transactions. He further admitted that he had not mentioned anybody's name in his statement as to who had deposited the amount of Rs.1,000/- in question. The prosecution further examined PW-8 Subhash Chand. He stated that he had deposited a sum of Rs.1,000/- as cash in the name of his daughter Puneeta Raj Sharma and a sum of Rs.5,000/- was deposited in the name of his wife Ms. Bimla Devi. The above said amount was deposited in the Golden Forest Company with the respondent. He had seen the photocopies of the certificates as Mark PW8/A and Mark PW8/B. In his cross-examination, he stated that he had received the receipt of deposit amount in Golden Forest Company from headquarter at Manimajra, Chandigarh after about a period of 25 /30 days. He did not have the copy of the form at the time of depositing the amount. The money, which was deposited by him, had been received back and he had no grouse whatsoever against Poonam Raj-respondent as he had received the money deposited by him. He stated that the documents Mark PW8/A and PW8/B did not bear the signatures of Poonam Raj-respondent.

After closure of the prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. Wherein he denied all the allegations levelled by the prosecution. While pleading his false implication, he stated that K.L. Malhotra, Director of the complainant company was running his office at District Mandi, whereas, the accused was running his office at Chahal Chowk. Since, the respondent was a local person in that area, he had captured the market and used to collect more amount for the company as compared to K.L. Malhotra. The amount collected by the respondent used to be sent to the main office at Manimajra sometimes directly or sometimes through bank and sometimes through Director K.L.Malhotra. The amount in question was handed over to Director, K.L. Malhotra by him these were the Director K.L. Malhotra and his man, who cheated the company by depositing Rs.1000/-

and showing the amount of Rs.81,000/- in the receipt and sent the same to the head office directly without disclosing the same to him. He did not fill-up any challan in the bank for depositing the alleged amount and had been falsely involved by Director K.L. Malhotra.

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

Learned counsel for the appellant vehemently argued that the learned lower Court had erred in not considering the prosecution evidence in its right perspective and the impugned judgment is based on surmises and conjectures. It was further stated that while making a deposit in the bank in the account of Golden Forests Co. after collecting money from the public, only Rs.1,000/- were deposited, whereas counter foil submitted to the Golden Forests Co., a deposit of Rs.81,000/- has been shown. This was done by adding the figure of '8' in the counter foil and the same was tampered. Thus, loss was caused to the company by the premeditated action of the accused. Even the said fact had been proved by the testimony of M.C. Rana, PW-7 of Punjab National Bank, Mandi, where the amount was deposited on 16.11.1994. Still further, the learned counsel further submitted that the account statement Ex.PA submitted by the respondent-accused to the head office shows that the accused had deposited a sum of Rs.81,000/-, whereas the receipt Ex.PB was also deposited alongwith the said statement. Thus, the offence under Section 420 IPC was made out against the respondent. Learned counsel further submitted that the offences under Sections 468, 471 IPC were also made out in view of the report submitted by the handwriting expert and the handwriting report was to be read in conjunction with the statement made by PW-7 and the respondent was liable to be acquitted.

The submissions made by learned counsel for the appellant have been opposed by the learned counsel for the respondent by submitting that the learned trial Court had recorded valid grounds while acquitting the respondent. Learned counsel further submitted that in the instant case, no person was cheated by the respondent. PW-8 clearly stated that he had no grouse against the present respondent and he had received the money back deposited by him. Apart from that, the testimony of PW-6, Vijay Kumar was not admissible in evidence and consequently, none of the customer was cheated by the present respondent. Even the company could not adduce any evidence to show that the respondent had cheated the company as well. Still further, in view of the definition of false document, as prescribed in Section 464 IPC, the document can be said to be forged only if it is purported to be signed by a person, who never signed or sealed it. The receipts were issued under the signatures of the respondent and he had the authority to issue them, consequently, the charge under Sections 468, 471 IPC was not made out against the present respondent and she prayed for upholding the impugned judgment.

I find no force in the submission made by learned State counsel that the documentary evidence clearly suggested that while making the deposit in the Bank in the account of Golden Forests Co., after collecting money from the public, only Rs.1,000/- were deposited by the respondent, while in the counter foil submitted to the Golden Forests Co., a deposit of Rs.81,000/- had been shown by adding a figure of ‘8’. In the instant case, to prove the offence under Section 420 IPC, the prosecution has examined three material witnesses.

PW-6 Vijay Kumar was examined to show the amount paid by him. He stepped into the witness-box as PW-6, however after getting his examination-in-chief recorded, he was never produced before the Court to face the cross-examination to prove the ingredients of the offence of cheating. Consequently, it is apparent that the testimony of PW-6 Vijay Kumar could not have been relied upon by the prosecution. The prosecution further examined PW-7 M.C. Rana, official of the Punjab National Bank, who stated that he did not know as to who had deposited the amount of Rs.1,000/- through Ex.PW2/A and even he did not know who had filled in that pay in slip. Still further, PW-8 Subhash Chand was examined, however, he did not allege anything against the present respondent. He stated that he had received back the amount, which was deposited by him. The prosecution could not lead any evidence to prove the ingredients of the offence under Section 420 IPC. The prosecution relied upon the documents Ex.PW2/A, Ex.PW2/B and Ex.PW2/C and in none of these documents, the name of the respondent was reflected nor there was any direct evidence to show that the alleged deposit of Rs.1000/- in cash in account No.1821 on 16.11.1994 was made by the present respondent. Even PW-7 admitted that in the pay in slip Ex.PW2/A, the signatures of the investors were not there in the column, despite the fact that there was a separate column for signatures of the person, who deposited in the bank. Learned trial Court has rightly recorded that the prosecution did not examine the officials from the head office Chandigarh to prove and establish the criminal liability of the accused/respondent for the commission of an offence of cheating with the said company by depositing only Rs.1000/- in the bank and giving the false information to the complainant company that he had deposited Rs.81,000/- with the bank. Consequently, the offence under Section 420 IPC was not made out in the instant case and the findings recorded by the learned trial Court are upheld and affirmed.

I find no force in the argument raised by learned State counsel that the offence under Sections 468, 471 IPC was made out against the respondent. In the instant case, learned trial Court has discussed in detail the definition of false document as enshrined in Section 464 IPC. The document can be said to be forged only if it is purported to be signed or sealed by a person, who in fact never signed or sealed it. In the instant case, the receipts were issued under the signatures of the respondent and he had the authority to issue them, the charge under Section 468 IPC was not made out against the present respondent. Learned trial Court has recorded the detailed and well-reasoned findings in this regard and the same are also liable to be upheld.

The Hon'ble Supreme Court has held in the matter of ***"State of Maharashtra Vs. Fazal Rehman Abdul, 2014(7) SCC (Crl.) 1"*** as follows:-

> *"9. This Court has laid down parameters for interference against the order of acquittal time and again. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be*

perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality."

In view of the above discussion, I find no valid reasons to interfere with the impugned judgment dated 04.11.2004 passed by the Court of Judicial Magistrate 1st Class, Chandigarh. The appeal lacks merit and the same is ordered to be dismissed.

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

The trial court record be sent back, immediately.

(N.S.SHEKHAWAT)
JUDGE

19.01.2023
Hemlata

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes