IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SR. No.802

CRA-S-565-SBA-2006 (O&M)
Reserved on:12.01.2023
Pronounced on:13.01.2023

State of Haryana

...Appellant

Versus

Mahender Singh

...Respondent

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

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

Mr. K.S. Malik, Advocate,
for the respondent.

N.S. SHEKHAWAT, J.

The State of Haryana has challenged the validity and the correctness of the judgment dated 14.12.2004 passed by the learned Sub Divisional Judicial Magistrate, Safidon, whereby the respondent was acquitted of the charges under Sections 408, 420, 468 and 471 IPC.

In the instant case, FIR was registered on the basis of communication dated 30.06.1997, addressed to the S.H.O. by Assistant Registrar, Co-operative Societies, Safidon against the present accused/respondent Mahender Singh, who at the relevant time was working as a salesman of Rampura Co-operative Credit & Service Society Ltd. It was stated in the said application that Gurbachan Singh, Hazara Singh, Harnam Singh, Balbir Singh, Bal Singh, Ramesh, Amar Singh, Kashmir Singh, Parkash had made the complaint by filing affidavits that the accused-respondent recovered Rs.25,760/-, Rs.12,000/-, Rs.4,648/-, Rs.17,400/-, Rs.19,000/-, Rs.4,980/-, Rs.11,280/-, Rs.30,000/- Rs.20,000/-, but he did not deposit the same in their accounts and embezzled the same. Apart from that, it was also alleged that fake entries of fertilizers had been made in their accounts by the accused/respondent. With these broad averments, the FIR was registered against the present respondent and the investigation formally commenced against him. After the investigation was concluded, the final report under Section 173 Cr.P.C. was presented in the court and a copy of the same was supplied to the respondent/accused.

After going through the record as well as hearing both the sides, the learned trial Court found a prima facie case under Sections 408, 420, 468 and 471 IPC and the respondent was charge sheeted accordingly.

In support of the charge, the prosecution examined 11 witnesses. It appears from the record that the prosecution witnesses have been numbered wrongly in the trial Court record. Hazara Singh was examined as PW-1, who stated that he had given a sum of Rs.22,000/- to the accused-respondent for depositing the same with the Society, however the said amount was not deposited in his account. In his cross-examination, he stated that earlier accused-respondent used to give the receipt, but when he gave a sum of Rs.22,000/-, the receipt was not given to him. He had taken the money from the Society. He asked the accused/respondent to give the amount, but he refused to give the amount. Copy and passbook were with the accused. After that, they had gone to SDM, where Hoshiar Singh, Secretary, produced the record. He could not tell on which papers he had put his thumb impressions. He stated that he had not taken any loan from the Bank. He was not aware as to how much amount was taken from the Society, but his signatures were taken on the papers. He could not tell the date, month and year, when he appeared before the SDM. PW-2 Gurbachan Singh stated that he was member of the Co-operative Credit Society and had called the accused at his place. His father had died due to heart attack on 03.01.1996 and on the same day, he met with an accident and suffered fracture. He further stated that on 08.06.1996, accused-respondent took the amount of Rs.14,000/- and a cheque book from him on account of recovery of loan amount obtained by his father. He also stated that the said amount was not deposited in his account. In his cross-examination, he admitted that his statement was recorded by the police, but he could not tell the date, month and year. Inquiry was not conducted by the SDM, but he had written to the In-charge Police Post, Mandi, Safidon. He was also serving in Treasury Office, Panipat. He had given the cheque of Rs.14,000/- for clearance of the account of his father, but the same was not entered in his statement Ex.D1. He admitted that the cheque book and the passbook were filled up by the Secretary and the same were having his signatures. He admitted that there are no signatures of Secretary and Salesman. PW-3 Bal Singh stated that he had obtained the loan from the Society and repaid the same. He had given Rs.19,000/- of loan and also on account of fertilizer to the accused for depositing the same in his account, but the receipt was not given by the accused to him. He could not tell whether the amount was deposited by the accused in his account or not. Later on, he stated that he had taken the loan of Rs.9,000 and he had given Rs.9,000/- to the accused for depositing the same in his account, but the same was not deposited by the accused. Even no receipt was given to him. His thumb impressions were obtained on the papers of Rs.9,000/-, but he did not identify his thumb impressions. In his cross-examination, he stated that he had only taken

Rs.9,000/- and not taken the loan of Rs.19,000/-. He could not tell as to how much amount was given by him, but the same was given with interest. He could not tell the date, month and year of giving the cheque-book. Rambir Rathi, AR, Co-operative Society Safidon, was examined as PW-4, who stated that on 30.06.1992, SDM, Safidon, had issued directions to them for registration of the FIR against the present respondent. The affidavits of complainants were also attached with the written orders of SDM and the FIR was registered accordingly. In cross-examination, he stated that the police had not recorded his statement and he had not received any complaint prior to the letter sent by the SDM against the accused-respondent. He had not mentioned the date, month and year of direction of SDM and could not tell the date of receiving the direction of the SDM. He could not tell the date, month and year of taking the affidavits from the witness. PW-5 Balbir Singh also could not tell any date, month and year regarding his meeting with the SDM or with regard to recording of his statement. However, he made similar lines as deposited by other witnesses. PW-6 Hoshiar Singh, Secretary, proved on record the original record and remained associated throughout the investigation. He could not say with regard to the entries made in various documents. He had not given the record to the police. He admitted that an agreement was executed in favour of the Society along with surety and passbook was issued to the loanee for cash. He had not seen any cash book or cheque books of loanees. The entries were made in the cheque books of the loanees, when he received cash from the Society. The society was audited every year. No enquiry was conducted against the accused-respondent and the case was registered at the instance of SDM, Safidon by the then Assistant Registrar. However later on, the accused was found to be innocent by the Assistant Registrar. He further admitted that the accused was still working with the Department. The case was got registered by the SDM on the basis of affidavits and all these documents were not certified or attested by him. The prosecution examined PW-7 Harnam Singh. He stated that about 8 years ago, his cheque book and copy were with accused-respondent. The accused got released some fertilizer on his name without his permission. He had not deposited the money in his account. Still further, Ramesh was examined as PW-8, who had taken the loan of Rs.9,000/- from the Cooperative Society for agriculture. A sum of Rs.4,980/- was not deposited by the accused in his account and made him defaulter. Similarly, PW-9 Amar Singh stated that he had given the amount to the accused for depositing the same in the Society, but it was not deposited. He, however, admitted that the accused had assured him to give receipt, but the same was not given. However, he did not know before giving the loan, the Secretary had taken pronote and agreement. He could not tell the number of cheque, date, month and year and the statement was never recorded by the police and the police never met him in the present case. PW-10 Kashmir Singh deposed an oath that he had taken the loan from the Society and given Rs.30,000/- to the accused. However, the said amount was not deposited. He could not tell the date, month and year of giving Rs.30,000/- to the accused. PW-11 Parkash Chand deposed that in the year 1995, he had taken a loan of Rs.6,000/- from the Society. He gave Rs.6,500/- along with interest to the accused, but receipt was not given by him. His passbook and cheque-book were also with the accused. However, he admitted in his cross-examination that the loan was to be given by the Secretary and he had issued the cheque and the recovery was to be effected by the Secretary. He could not tell the date, month and year of taking care of the loan.

After the closure of the prosecution evidence, the statement of the accused under Section 313 Cr.P.C was recorded and he stated that he had been falsely involved in the instant case at the instance of SDM, who was under political pressure.

After appreciating the evidence on record, the learned trial Court concluded that the prosecution has miserably failed to prove its case, and accordingly, accused/appellant was acquitted of the charges noted above.

Learned counsel for the appellant has vehemently argued that the evidence of various prosecution witnesses has not been appreciated correctly. She further stated that all the prosecution witnesses have stated that they had given various amounts to the accused and rather he did not deposit the same with the Society. She also submitted that the impugned judgment is based on misappreciation of evidence and the settled law and is liable to set aside by this Court.

On the other hand, learned counsel for the accused-respondent submitted that the judgment passed by the learned trial Court is well reasoned and is liable to upheld by his Court.

This Court has heard the learned counsel for the parties and perused the case file minutely.

The main charge in the instant case was that while the accused-respondent was posted as salesman in the Rampura Co-operative Society and was entrusted with various amounts by the members of the Society, still he did not deposit the same in their ledger dishonestly, made bogus entries in the ledger of consumers of the Society as genuine regarding the fertilizers and used the ledger of consumers of the Society as genuine, which he knew to be a forged document. However, the prosecution miserably failed to prove the same by leading the cogent and convincing evidence. Even none of the prosecution witness could place on record any documentary evidence to substantiate the charges. Even the cross-examination of various witnesses clearly shows that they were not aware of the time, date and month of handing over the amounts to the accused. Still further, it is not in dispute that when a cheque is issued, it is issued by the Central Bank and not by the Society. Still further, a salesman had no concern with the issuance of the cheque and it always bears the signatures of the concerned Secretary of the Society. Even none of the prosecution witness had made any application or complaint to the concerned Society, Secretary, Manager, Assistant Registrar or any other higher officers of the Co-operative Department before the registration of the present case at the instance of the SDM. Even no prosecution witness could even mention the date, month and year regarding giving the amount to the accused against their accounts. Apart from that, the Societies are audited every year, but no audit record was filed before the Court. Even the accused was found innocent by the Inquiry Officer i.e. Assistant Registrar, after the registration of the present case and the Assistant Registrar was cited as a prosecution witness.

In the instant case, the Assistant Registrar was the concerned authority for examining the matter, however he did not register the FIR and it was registered on the directions of the SDM in writing. Still further neither the SDM nor any concerned official was examined by the prosecution. Even no enquiry was held prior to the ordering of registration of the FIR and the enquiry, which was held subsequent to registration of the

FIR found the accused innocent. Still further, the prosecution also failed to examine the Investigating Officer of the present case, who was the most material witness in the instant case. The said non-examination is not only fatal to the case of the prosecution, but the accused was also deprived of his valuable right to cross-examine the main witness of the prosecution. Even no evidence regarding forging of any document was adduced by the prosecution. Thus the learned trial Court was correct in arriving at the conclusion that no offence could be proved by the prosecution.

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

> *"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."

Considering the facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant appeal is wholly misconceived, bereft of merits and without any substance; thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations, the present appeal stands dismissed. Pending application(s), if any, shall also stand disposed of.

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

(N.S. SHEKHAWAT)
JUDGE

13.01.2023
mks

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