

CRM-A-1636-MA-2016 (O&M)
CRM-A-1719-MA-2016 (O&M)

N.C. No.2023:PHHC:063029
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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-A-1636-MA-2016 (O&M)
Date of decision: 25.04.2023

State of Punjab

....Appellant

Versus

Sudarshan Singh

...Respondent

CRM-A-1719-MA-2016 (O&M)

State of Punjab

....Appellant

Versus

Raj Kumar Monga

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. HS Sullar, Sr. DAG Punjab for the appellant

Ms. Suman Kumari, Advocate
for the respondent in CRM-A-1636-MA-2016

Ms. Navneet Kaur, Advocate
for the respondent in CRM-A-1719-MA-2016.

AMAN CHAUDHARY. J.

1. The present applications for leave to appeal have been filed against the judgment dated 13.02.2015 passed by learned Additional Sessions Judge, Ferozepur, whereby it acquitted the respondents by allowing their appeals filed against the judgment of conviction and order of sentence dated 23.02.2012 rendered by the learned trial Court, in FIR No.64 dated 06.07.2001, registered under Sections 120-B, 406 IPC at Police Station Guruhar Sahai.

2. Succinctly, the facts that lead to the dispute involved in the present case are that complainant-PUNSUP delivered paddy for custom milling to the accused-respondent, regarding which an agreement was entered into between the parties. Partial delivery of the rice was made but due to a shortage found when the physical verification got conducted, loss had been caused and the rice could not be supplied to FCI, thus, violation of terms of agreement was alleged, FIR was registered under Sections 406, 420 read with Section 120-B IPC.

3. After investigation, final report under Section 173 CrPC was presented before the Court, however, charge was framed under Sections 120-B and 406 IPC, to which the accused- respondent pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case, examined as many as six witnesses. After closure of the prosecution evidence, in the statement recorded under Section 313 Cr.P.C., accused-respondent Sudarshan Kumar denied all the incriminating circumstances appearing against him in the prosecution case and pleaded innocence. He took the plea that District Manager of the Corporation had demanded payment of Rs.50,000/- from him, and when he refused to oblige, he was falsely implicated. The accused-respondent Raj Kumar Monga took the plea that the complainant corporation never recommended to take any such action/ FIR against him. In their defence, though they did not examine any witness, however, tendered documents.

5. The trial Court convicted the accused-respondent. They being aggrieved, assailed the same by filing an appeal before the Additional Sessions Judge, Ferozepur, which was allowed and the judgment of the trial Court was set aside, thereby acquitting them.

6. State has filed the present application seeking leave to appeal.

7. The pith and substance of the submissions advanced by learned State counsel are that the judgment of the trial Court was well reasoned based on evidence on record, which has been wrongly upset by the lower appellate Court. Once there was documentary evidence and physical verification reports whereby it was found that 970 quintals of paddy had been misappropriated, the conviction of accused-respondents, who were partners in the firm-M/s Kultar Singh and Brother Rice Mill, was required to be maintained. The testimonies of witnesses regarding entrustment and failure of accused-respondents to deliver the rice were consistent and supported by documentary evidence. The ingredients of Section 406 IPC were proved, there being sufficient evidence on record.

8. Learned counsel for the respondents had contended that the lower appellate Court has rightly found that there was no evidence whereby the ingredients of Section 405 IPC to invite the offence under Section 406 IPC, could be proved and the dispute was purely civil in nature, arising out of the terms and conditions of agreement Ex.P-1, thus reversed the judgment of the trial Court.

9. Heard learned counsel for the parties and perused the record.
10. It would be worthwhile to make a reference to the judgment of the lower appellate Court, relevant paras whereof read thus:

“19. Accused in their defence has also brought on record the copies of Judgments of other courts Ex.D-1/A to Ex. D-1/E and Ex.DX/3 whereby the millers of similar allegations got acquitted from the criminal liability. Copy of Arbitration Award Ex.D-1 has also brought on record. The cross-examination of PWs that relieving report of Raj Kumar Monga Ex.DX; Ex.DX/B and DY/B have been brought on record and that register entry Ex.DX and Ex. DX/A have also brought on record. Rest of the documents are formal in nature. So, there is no need to discuss the same.

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21. First of all regarding any such role of that appellant Raj Kumar Monga, it has come on record from the evidence of PW-2 and PW-3 that he was neither that joint custodian of that paddy/rice nor was he having any role with that dispute of the complainant corporation against that accused firm. Rather that Raj Kumar had already transferred and relieved on 22.8.1997. During his tenure nothing was found any such shortage in that stock. Therefore, that PWs have given the clean chit to that Raj Kumar Monga that the said dispute was only with the miller/accused firm and he was having no role for that dispute with the miller. Apart from that no such documentary evidence has come on record reflecting any such criminal liability of Raj Kumar Monga to that episode. Therefore, from the oral as well as documentary evidence on record though that Raj Kumar Monga was an employee of the complainant corporation but there is nothing on record to fasten his criminal liability in any manner qua that agreement.

22. Further, so far the accused-appellant Sudarshan Singh that entrustment of that paddy to the accused firm as alleged by the prosecution, it was in consequent to the agreement Ex.P-1 of contract of paddy milling. Now, it

is evident on record from the oral evidence on record and that from the terms and conditions of that agreement Ex. P-1 especially of Clause 6 that it was the joint custody of that paddy of procuring agency i.e. complainant and the miller. Thus, the entrustment does not fulfill the ingredients of entrustment of Section 405 of the Indian Penal Code that is especially exclusive dominion of that stock of that accused firm. Moreover, that alleged entrustment was to the said firm M/S Kultar Singh and brothers and that firm has not arrayed as accused being partner of that firm, but at the same that partnership deed of that accused firm has not been proved on record as per the provisions of Indian Evidence Act.

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28. The learned trial court remained in error to observe that dispute finding of Civil nature; to ignore the terms and conditions of that agreement Ex.P-1 which are inviting the dispute of civil nature in case of any breach of that terms and conditions; the essential ingredients of Section 405 of IPC to invite the offence under section 406 IPC and that essential ingredients for *mens rea* for that offence of 406 of Indian Penal Code.

29. Consequently, this court has found sufficient grounds to interfere against the impugned judgment of conviction and orders of sentences passed by the learned trial court finding material illegality, irregularity and perversity, in the findings arrived by the learned trial court holding the accused persons guilty for the aforesaid charges, convicting and sentencing there under. So, the present appeals are hereby accepted and the impugned judgment and orders of conviction are hereby set-aside. The surety bonds of the appellants are hereby discharged. Fine deposited by them is ordered to be refunded to them under the rules and after the expiry of period of appeal/revision/review if any...

(emphasis supplied)

11. In **Khedu Mohton vs. State of Bihar**, (1970) 2 SCC 450, Hon'ble

The Supreme Court held that, "It is true that the powers of the High Court in

considering the evidence on record in appeals under s. 417, Cr.P.C. (1898) are as extensive as its powers in appeals against convictions but that court at the same time should bear in mind the presumption of innocence of accused persons which presumption is not weakened by their acquittal. It must also bear in mind the fact that the appellate judge had found them not guilty. Unless the conclusions reached by him are palpably wrong or based on erroneous view of the law or that his decision is likely to result in grave injustice, the High Court should be reluctant to interfere with his conclusions. If two reasonable conclusions can be reached on the basis of the evidence on record then the view in support of the acquittal of the accused should be preferred. The fact that the High Court is inclined to take a different view of the evidence on record is not sufficient to interfere with the order of acquittal.”

12. Significantly, the accused-respondents had produced the copies of the judgments whereby on similar allegations, the Millers were acquitted of the criminal liability as well as the copy of arbitration award in the present case, besides other documents, to rebut the prosecution version and demonstrate that a criminal cloak, has been given to a dispute, which was civil in nature. A finding rightly came to be recorded that the ingredients of Section 406 IPC as regards entrustment of paddy were not fulfilled, as exclusive of the stock was of the Firm, which was not arraigned as an accused. Further that the accused-respondent Sudarshan Singh stated to be a partner of the said Firm, however, a partnership

deed was not proved as per the provision of the Indian Evidence Act. There is nothing that has been brought out to dispel the reasoning of the lower appellate Court that the case involves a breach of contract and *mens rea* was lacking to commit the offence, a major part of the contract having been concluded. There is no substantial question of law raised on behalf of the appellant. Where the judgment of acquittal is recorded, two important aspects emerge therefrom, before the appellate Court. Firstly, there is presumption of innocence of the accused person in our criminal jurisprudence and secondly, the concerned court has recorded the finding in favour of the accused and disbelieved the prosecution and has founded as a matter of fact that the prosecution has failed to prove its case beyond reasonable doubt, thus giving benefit to the accused. Both these presumptions-jurisprudential and in regard to the factual matrix- must be kept in mind and unless the conclusions reached by the Court were palpably erroneous or contrary to law or it is likely to result in injustice. The High Court may be reluctant in interfering with the judgment of acquittal. [See **Satyavir Singh vs. State of U.P.**, (2010) 3 SCC 174]

13. It is trite that the power of High Court to reverse the acquittal to conviction must be sparingly used and when a possible view is taken by the Court below, the same cannot be interdicted. Acquittal bolsters the presumption that the accused is innocent. The Courts in their appellate power cannot supplant over the view of the trial Court, as long as the same is reasonably formed.

14. In light of the foregoing discussion, this Court concurs with the judgment passed by the lower appellate Court. Finding no merit, the prayer for grant of leave to appeal is hereby declined.
15. A photocopy of this order be placed on the file of connected case.

(AMAN CHAUDHARY)
JUDGE

25.04.2023
S.Sharma(syr)

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No