

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-192-MA-2018
Date of Decision: 10.05.2023

Daljinder Singh

...Petitioner

Versus

Jai Bhagwan Goel and another

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Saksham Parmar, Advocate for
Mr. Vivek K. Thakur, Advocate for the petitioner.

Mr. Shivam Kaushik, Advocate for
Mr. Sameer Rathore, Advocate for respondent No.1.

DEEPAK GUPTA, J.

This revision is directed against the order of acquittal. Complaint was filed by the petitioner to prosecute respondent – Jai Bhagwan Goel and two others, under Section 499 IPC read with Section 500 IPC in the Court of learned Sub Divisional Judicial Magistrate, Guhla. After holding trial, respondent – Jai Bhagwan Goel was convicted by the trial Court vide judgment dated 02.09.2016 under Section 500 IPC and vide a separate order, he was sentenced to undergo rigorous imprisonment for a period of one month and to pay a fine of ₹5,000/- with default sentence. However, appeal (*criminal appeal N: 62 of 2016 – CNR N: HRKH01-003523-2016*) filed by the respondent- accused – Jai Bhagwan Goel was allowed by learned Additional Sessions Judge, Kaithal vide judgment dated 25.10.2017, against which this revision has been preferred.

2. It is contended by learned counsel for the petitioner that complainant- petitioner is a qualified doctor, having passed BAMS from

Government Ayurvedic College, Paprolla, District Kangra (H.P.). He is a registered medical practitioner since 1984 and had got himself registered in the year 2003 in the State of Haryana. He has been defamed by the accused by publishing the news item to the effect that he is a quack and not a qualified doctor. Accused was a Press Reporter at the relevant time and was having enmity with the petitioner and his wife because wife of the petitioner had earlier filed complaint against him (present respondent) under Sections 354, 402, 467, 468, 471, 506, 509, 120-B, 34 IPC, in which petitioner had appeared as a witness. Therefore, with a view to tarnish the reputation of the petitioner in the society, he published the news item in the newspaper "*Daily Punjab Kesri*" dated 09.08.2012 in its supplement "*Kaithal Kesri*" stating that the petitioner was a quack and that there was no qualified doctor in the orphanage. It is contended that well-reasoned judgment of conviction recorded by the trial Court based on evidence, has been set aside by the Appellate Court, without taking into consideration the fact that sufficient evidence was produced on file to the effect that petitioner had been defamed. Prayer is made to set aside the impugned judgment passed by the Appellate Court and to restore that of the trial Court.

3. Upon notice to respondent No.1, he made appearance through his counsel and contested the revision. Learned counsel submits that learned Appellate Court appreciated the evidence in its right perspective and rightly acquitted the respondent. Learned counsel further contends that scope of interference in the appeal against acquittal is quite limited, as order of acquittal adds up to the presumption of innocence in favour of the accused. With these submissions, prayer is made for dismissal of the revision.

perused the record.

5. While dismissing the appeal, learned Additional Sessions Judge, after referring to the evidence produced by the parties and the submissions made by both of them, observed as under: -

21. *As is clear from above discussion that complainant was working as a doctor in Braham Shakti Ashram (Registered) and Guru Dham, Anathalya Gaggar. A news item was published in Punjab Kesari as Ex.C1 on 9.8.2012. It says that there was no qualified doctor in Braham Shakti Ashram (Registered) and Guru Dham, Anathalya Gaggar (Under heading that he was not qualified doctor). Braham Shakti Ashram of Orphanage could get rid of unqualified doctors by appointing a qualified doctor.*

22. *It is complainant's case that by virtue of this news item accused has lowered his prestige and tarnished his image among nears and dears in particular and in the area in general. To prove this fact, he has examined two persons besides his wife and himself. PW-1 in his examination-in-chief stated that his name was Rajinder Pal Singh. So, it is very difficult to believe him when he does not know his name even, it cannot be believed that his reputation was lowered in his eyes because of this news item. PW-2 Kulwinder Singh stated that reputation of complainant was intact in his eyes. His wife of course stated that this news item was published due to vengeance. But before relying upon her statement it has to be kept in mind that in 2009, she had filed a criminal complaint, Ex.C5 against appellant-accused. This complaint was dismissed vide judgment Ex. DX in the year 2014 and he was acquitted.*

23. *In her complaint she had levelled allegations against appellant- accused that he tried to outrage her modesty. It is also alleged by her that it is appellant- accused behind her transfer, so her deposition cannot be accepted without an element of suspicion. Same is in respect of statement made by complainant.*

24. *There is one more aspect as already seen accused had received a letter Ex.DW1/A and he forwarded the same to that newspaper Editor and it was published. Trial Court has dismissed his complaint against Chief Editor and Joint Editor. In their absence this complaint cannot be maintained against him alone. Had it not been published or publisher and editor had*

refused to entertain it, it would not have been published.”

6. In ***Jafarudheen and others Vs. State of Kerala, 2022(2)***

R.C.R. (Criminal) 919, Hon’ble Supreme Court discussed the scope of appeal against the acquittal. It was held as under: -

“Scope of Appeal filed against the Acquittal:

*25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr. PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that **an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters. Precedents:***

□ Mohan @Srinivas @Seena @Tailor Seena v. State of Karnataka, [2021 SCC OnLine SC 1233] as hereunder: –

“20. Section 378 CrPC enables the State to prefer an appeal against an order of acquittal. Section 384 CrPC speaks of the powers that can be exercised by the Appellate Court. When the trial court renders its decision by acquitting the accused, presumption of innocence gathers strength before the Appellate Court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. Certainly, the Court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person while they depose. The Appellate Court is expected to involve itself in a deeper, studied

scrutiny of not only the evidence before it, but is duty bound to satisfy itself whether the decision of the trial court is both possible and plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. Article 21 of the Constitution of India also aids the accused after acquittal in a certain way, though not absolute. Suffice it is to state that the Appellate Court shall remind itself of the role required to play, while dealing with a case of an acquittal.

21. Every case has its own journey towards the truth and it is the Court's role undertake. Truth has to be found on the basis of evidence available before it. There is no room for subjectivity nor the nature of offence affects its performance. We have a hierarchy of courts in dealing with cases. An Appellate Court shall not expect the trial court to act in a particular way depending upon the sensitivity of the case. Rather it should be appreciated if a trial court decides a case on its own merit despite its sensitivity.

22. At times, courts do have their constraints. We find, different decisions being made by different courts, namely, trial court on the one hand and the Appellate Courts on the other. If such decisions are made due to institutional constraints, they do not augur well. The district judiciary is expected to be the foundational court, and therefore, should have the freedom of mind to decide a case on its own merit or else it might become a stereotyped one rendering conviction on a moral platform. Indictment and condemnation over a decision rendered, on considering all the materials placed before it, should be avoided. The

Appellate Court is expected to maintain a degree of caution before making any remark.

23. This court, time and again has laid down the law on the scope of inquiry by an Appellate court while dealing with an appeal against acquittal under Section 378 CrPC. We do not wish to multiply the aforesaid principle except placing reliance on a recent decision of this court in Anwar Ali v. State of Himanchal Pradesh, (2020) 10 SCC 166:

14.2. When can the findings of fact recorded by a court be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under : (Babu case [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179]) “20. 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. (Vide Rajinder Kumar Kindra v. Delhi Admn. [Rajinder Kumar Kindra v. Delhi Admn., (1984) 4 SCC 635 : 1985 SCC (L&S) 131], Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, 1992 Supp (2) SCC 312], Triveni Rubber & Plastics v. CCE [Triveni Rubber & Plastics v. CCE, 1994 Supp (3) SCC 665], Gaya Din v. Hanuman Prasad [Gaya Din v. Hanuman Prasad, (2001) 1 SCC 501], Aruvelu [Arulvelu v. State, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288] and Gamini Bala Koteswara Rao v. State of A.P. [Gamini Bala Koteswara

Rao v. State of A.P., (2009) 10 SCC 636 : (2010) 1 SCC (Cri) 372])”

It is further observed, after following the decision of this Court in Kuldeep Singh v. Commr. of Police [Kuldeep Singh v. Commr. of Police, (1999) 2 SCC 10: 1999 SCC (L&S) 429], that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.”

7. In the present case, learned Appellate Court has analysed the evidence on record and has come to conclusion that complainant-petitioner was not able to prove his allegations. The view taken by the Appellate Court is a possible view, based on evidence on record. Simply because another view is possible, cannot be a reason for this Court to interfere in the judgment of acquittal recorded by the Appellate Court.

8. Consequent to the above discussion, it is held that there is no illegality or material irregularity in the impugned judgment of acquittal. Therefore, present application is hereby dismissed.

May 10, 2023

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(DEEPAK GUPTA)

JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No