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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of Decision: 05.12.2023

AJAY KUMAR

-Applicant

Versus

JOGINDER PAL & ORS.

-Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Mr. Johny, Advocate with
Mr. Arvind Kashyap, Advocate
for the applicant.

KULDEEP TIWARI, J.

1. The instant application, seeking grant of leave, is directed against the order of acquittal dated 27.03.2017, rendered by learned Chief Judicial Magistrate, Pathankot, whereby, the respondents have been acquitted from the charges framed against them, under Sections 323 and 148 of the IPC, in a private complaint.

2. The roots of the instant application can be traced to a complaint made by the present applicant, alleging therein that, on 07.04.2010, at about 06:45 p.m., besides his being attacked by the respondents herein, snatching was also done by them. The contents of complaint, as narrated in paragraph No.2 of the order of acquittal (supra), are extracted hereinafter:-

“2. Briefly, it has been stated that, complainant has been a peace loving and respectable person of locality and belonging to Brahmin family. On dated 07.04.2010 at about 06.45 P.M., complainant was going on his motor-cycle bearing No. PB-35-E-5456 towards market and while he reached ahead of Eravedic School Lamini, Pathankot;

accused persons namely Joginder Pal son of Kaka Ram, Jatinder Singh alias Nanni, Mahesh Kumar, Joginder Singh son of Gian Singh, Chuni Lal and Amandeep Singh were already standing there, while forming unlawful assembly. Accused Jatinder Singh @ Nanni was armed with a bat, Mahesh Kumar armed with stick and accused Amandeep Singh was armed Sword (Kirpan) and the remaining accused were empty handed. While seeing complainant, all accused forcibly stopped him and criminally intimidated him. Accused Joginder Pal son of Kaka Ram raised a lalkara "Phar lao Ajay nu aaj is da bhog pa dayeye". On this, accused Amandeep Singh gave reverse side of kirpan blow to him, which hit on complainant's upper back side. Then, accused Mahesh Kumar gave stick blow on the left and right arms as well as forehead of complainant. Accused Joginder Pal son of Kaka Ram, Joginder Singh son of Gian Singh and Chuni Lal gave fist and slap blows on the different part of the body of complainant. Accused also caused damaged to the motor-cycle of complainant with the sticks and with reverse side blow of kirpan, inflicted by accused Mahesh Kumar and Amandeep Singh. Complainant raised noise 'Bachao-Bachao' and in the meanwhile, one Krishan Kant son of Ram Rakha and Raj Kumar son of Gurwar Mal suddenly came and that, on seeing said persons, all the accused fled away from the place of occurrence. While leaving the place, they not only threatened the complainant with life but, they also taken away his mobile phone and cash amount of Rs. 22,680/-. Afore-stated Krishan Kant arranged some conveyance and complainant was get admitted in Civil Hospital, Pathankot, wherein his MLR dated 08.04.2010 was conducted. It has further been stated that, matter was reported to the police Station Division No.1, Pathankot but, police did not take any action. All the accused have been very motivated persons. They also inflicted themselves self styled injuries and get registered a false FIR No.110 dated 09.04.2010 against complainant and his witnesses Krishan Kant and Raj Kumar. Father of accused Jatinder Singh alias Nanni has been retired from the police department. So, accused party managed the police officials and as such, it has been requested that action be taken against all the accused, as per law."

3.

DEVINDER YADAV
2023.12.12 09:07
I attest to the accuracy and
authenticity of this
order/judgment

Consequent upon filing of the complaint (supra), the applicant

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herein led his preliminary evidence, which led to the learned trial Court summoning the respondents herein to face trial for commission of offences punishable under Sections 323, 148, 149 of the IPC.

4. Subsequently, finding a prima facie case, Notice of Accusation for commission of offences punishable under Sections 323, 148 of the IPC was served upon the respondents herein.

5. However, the learned trial Court, after considering the oral testimonies as well as documentary evidence, as led before it, proceeded to record the order of acquittal (supra), on the ground, that the complainant/applicant herein has miserably failed to establish the guilt of accused/respondents herein, beyond reasonable doubt.

6. There is no dispute that this Court can re-appreciate the entire evidence while dealing with an order of acquittal. The High Court has full power to appreciate the entire evidence to reach its own conclusions and it is also open for the High Court, to re-determine the question of facts and law. For this, we place reliance upon the judgment passed by Hon'ble Supreme Court in *State of Maharashtra vs. Sujay Mangesh Poyarekar*, 2008 (9) SCC 475.

7. Also, Hon'ble Supreme Court in *Chandrappa vs. State of Karnataka*, 2007(2) RCR (Crl.) 92 laid down broad principles to be followed while dealing with an appeal against an order of acquittal, which are as under:

“(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court, based on the evidence before it, may reach its

own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

8. What led to the learned trial Court recording the order of acquittal (supra), was that, there occurred unexplained delay of nine months in filing the complaint (supra), as the alleged occurrence took place on 07.04.2010, whereas, the complainant (supra) was filed on 20.01.2011. Moreover, the feeble explanation qua delay, as provided by the complainant/applicant herein, inasmuch as, no action being taken by the police upon his grievance, also did not find favour with the learned trial Court concerned, as he did not produce any alleged application regarding the alleged occurrence, in support of his version qua lethargic and lackluster approach of police.

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9. Not only this, the material contradictions and discrepancies in the testimonies of complainant's witnesses, which went on to demolish the case set up by the complainant, also resulted in the learned trial Court acquitting the accused/respondents herein.

10. This Court has made a meticulous survey of the impugned order of acquittal, however, it does not appear to be tainted with any illegality or perversity. The reasons for forming this inference are elucidated hereinafter.

11. The alleged occurrence took place on 07.04.2010, while the complaint (supra) was apparently made on 20.01.2011, thereby creating a delay of approx. 8½ months. What renders this delay more hazardous is the failure of the complainant/applicant herein to provide any suitable explanation for it, besides the explanation, if any provided, was an unreasonable, in the absence of any cogent documentary evidence.

12. Furthermore, there are material contradictions and discrepancies evident on the face of the record, inasmuch as, applicant herein/CW2 Ajay Kumar deposing that he was taken to the hospital concerned by CW1 Krishan Kant, whereas, CW1 Krishan Kant, upon being cross-examined, deposed that he did not accompany the complainant/CW1 Ajay Kumar to the hospital concerned. The trail of contradictions does not end here, as the applicant herein/CW2 Ajay Kumar narrated in his complaint that the accused/respondents herein had snatched his mobile and cash amount of Rs.22,680/-, whereas, while making testification before trial Court, he stated that only his mobile worth Rs.26-27,000/- was snatched by accused/respondents herein.

13. Also, though CW2 Ajay Kumar deposed that he suffered about

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15 to 20 injures in the alleged occurrence, and, that his medical examination was conducted immediately after said alleged occurrence, however, the record does not lend any corroboration to his deposition. The impugned order of acquittal reveals that upon a perusal of medical document (i.e. MLR, produced on record by complainant, but not exhibited and proved during his evidence), it surfaced that his medical examination was conducted on next day, i.e. 08.04.2010, whereupon, only three bruise injuries were found on his body.

14. Therefore, the testimonies of CW1 and CW2 do not inspire any confidence, rather are covered by clouds of suspicion.

15. Ordinarily, the order of acquittal will not be interfered with, lightly, merely because other view is possible. Upon passing of an order of acquittal, presumption of innocence in favour of the accused gets reinforced and strengthened, as laid down by Hon'ble Supreme Court in *Harijana Thirupala vs. Public Prosecutor, High Court of A.P., (2002) 6 SCC 470*.

16. Upon a cumulative reading and appreciation of the evidence on record, this Court comes to a conclusion that the testifications of the complainant's witnesses are not credible, rather the same are found to be replete with infirmities. Moreover, the reasoning given in the trial Court's judgment does not suffer from any gross perversity or absurdity of misappreciation and non-appreciation of the evidence on record. It is trite law that order of acquittal should not be disturbed unless there are substantial or compelling circumstances.

17. Therefore, this Court does not find any ground to interfere with the order of acquittal. In sequel, the **application for leave to appeal** is hereby **declined**, it being bereft of merit, and, the **impugned order of**

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acquittal, rendered by the learned trial Court, is hereby **upheld**.

18. The case property, if any, be dealt with in accordance with law.

The record be forthwith sent down.

(KULDEEP TIWARI)
JUDGE

05.12.2023
devinder

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No