IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-879-MA-2018
Date of Decision: 24.04.2023

OM PARKASH

…Applicant

Versus

STATE OF HARYANA AND ANOTHER

…Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ram Kumar Saini, Advocate
for the applicant.

HARSH BUNGER, J. (Oral)

The instant application has been filed under Section 378(4) of the Code of Criminal Procedure, for grant of leave to file appeal against impugned judgment dated 02.02.2018 passed by learned Judicial MagistrateIst Class, Hisar; whereby, respondent No.2-accused has been acquitted of the charges framed against him.

2. Briefly, applicant-complainant (Om Parkash) filed a complaint under Section 420 of the Indian Penal Code (for short `the IPC'), wherein it was alleged that the complainant is doing the work of agriculture. It was stated that the Delhi government had invited the applications forDDA flat in Rohini (Delhi); wherein, the applicant-complainant filled up the form No.0871413 through State Bank of India, after depositing of Rs.5,050/- on 15.09.2008. As per the complaint, after three months of depositing the form, draw was declared by the DDA and the complainant received a telephonic message from the respondent No.2-accused that he is an employee of DDA department. It is alleged that respondent No.2-accused informed the complainant that he was successful in the draw of DDA and a

flat of DDA is declared in the name of the complainant. It is alleged that respondent No.2-accused directed the complainant to deposit a sum of Rs.21,450/- without any delay in Account no.01541500798 of ICICI Bank, otherwise his flat will be cancelled. As per the complainant, he deposited Rs.21,450/- on 17.12.2008 in the afore-said bank account and upon inquiring, the respondent No.2-accused is alleged to have told the applicant-complainant that his flat No.GH-1 (3rd floor), Sector 28, Rohini (Delhi) has been declared in the name of the complainant. As per the complainant, respondent No.2-accused came at Hisar and demanded a sum of Rs.1,50,150/- as an instalment. As per the complaint, after few days, the complainant along with his relative Raj Kumar went to Delhi then it was found that the above noted flat belongs to some other persons; whereupon, the complainant inquired into the matter from DDA department (Delhi) and he found that respondent No.2-accused had made a fool of the complainant and grabbed his amount and thus, committed fraud. It is stated in the complaint that the complainant visited the house of respondent No.2-accused on several occasions for collecting the amount and also made the telephonic calls. However, respondent No.2-accused did not pay the above-said amount to the complainant.It is alleged that on 04.12.2011, the applicant-complainant visited Delhi and demanded the amount; however, respondent No.2-accused gave abuses and threats to the complainant that in case, he demanded the amount or disclosed anything to anyone, then he would be killed. It is submitted that the complainant moved an application to Police Station Rohini(Delhi) for taking action against respondent No.2-accused but they did not pay any heed to it. It was further alleged that on 13.12.2011 at about 7:00 p.m., when the complainant was eating food in his house then suddenly, the respondent No.2-accused along with two other persons came in a car along with hockey/sticks and started demolishing the articles lying in the house and further gave beatings to the complainant and children and said that he will teach a lesson for moving complaint against him; whereupon, the complainant cried *"Mar Diya Mar Diya"* then Lala sonof Bahadur, Sunil Kumar son of Lala residents of Sishwal came there and saved the complainant and his children from the accused persons and while leaving from there, they further gave threats to kill the complainant. It is stated that the complainant again moved an application to Police Station Adampur; however, no action was taken. Accordingly, the complaint was filed.

3. In the preliminary evidence, the applicant-complainant examined himself as PW-1 and further examined one Raj Kumar as PW-2. The complainant tendered the documents as Ex. P1 to Ex. P9 and closed the preliminary evidence; whereupon respondent No.2-accused was summoned vide order dated 16.05.2016 under Section 420 of the IPC.

4. In pre-charge evidence, the applicant-complainant examined the following witnesses :-

PWs	***Name of the witness***
PW-1	*V.S. Sangwan, Deptt. Manager, SBI HAU Branch, Hisar.*
PW-2	*Sandeep, SO, ICICI Main Branch, Hisar.*
PW-3	*Mahipal, Junior Secretariat, Asstt. Coordination (Housing) Delhi.*
PW-4	*Om Parkash, complainant.*

5. On finding a *prima facie* case punishable under Section 420 of the IPC, the respondent No.2-accused was charge-sheeted vide order dated 01.11.2017 to which, he pleaded not guilty and claimed trial.

6. The complainant is stated to have got recorded his statement on 03.11.2017, wherein it was stated that he does not want to examine any other witness in after charge evidence and that his previous evidence be also read as after charge evidence and closed the same. Similar statement was also made by learned counsel for the accused that he does not want to cross-examine any witness in after charge evidence.

7. Thereafter, the statement of the accused under Section 313 Cr.P.C., was recorded, wherein he denied the allegations in the complaint in *toto*.

8. Learned trial Court, after appreciating the evidence/material available on record, acquitted the respondent No.2-accused of the charges framed against him vide judgment dated 02.02.2018 passed by learned Judicial Magistrate Ist Class, Hisar.

9. In the afore-said circumstances, the present application for grant of leave to file appeal has been filed before this Court.

10. I have heard learned counsel for the applicant/complainant and gone through the impugned judgment dated 02.02.2018 passed by learned Judicial Magistrate Ist Class, Hisar.

11. Recently, in ***Criminal Appeal No. 1904 of 2014, Roopwanti v. State of Haryana (Decided on 24.02.2023)***, reported as ***2023(3) Scale 323***, Hon'ble Supreme Court of India, while considering scope of interference in a judgment of acquittal, has held as under: -

> "*7. In cases where a reversal of acquittal is sought, the courts must keep in mind that the presumption of innocence in favour of the accused, on grounds of it surviving the rigours of a full trial, is strengthened and stands fortified. The prosecution then, while still working under the same burden of proof, is required to*

discharge a more onerous responsibility to annul and reverse the fortified presumption of innocence. This fortification of the presumption of innocence has been held in a catena of judgments by this court.

8. In the case of ***Allarakha K. Mansuri v. State of Gujarat 2002(1) RCR(Criminal) 748****, this Court has held that in cases of reversal of acquittal, where two views are possible, the view which favors the accused has to be adopted. For the sake of Convenience, the relevant paragraph of the judgment is being produced hereunder:*

> *"The settled position of law regarding the powers to be exercised by the High Court in an appeal against the order of acquittal is that though the High Court has full powers to review the evidence upon which an order of acquittal is based, it will not interfere with an order of acquittal because with the passing of an order of acquittal the presumption of innocence in favour of the accused is reinforced. The High Court should be slow in disturbing the finding of the fact arrived at by the trial court. The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted."*

9. Further, in the case of ***Suman Chandra v. Central Bureau Of Investigation Criminal Appeal No.1645 of 2021*** *wherein the acquittal of the accused was challenged, this court held that while exercising its powers to reverse an acquittal, the order of the trial court must not only be erroneous, but also perverse and unreasonable. The relevant paragraph of the judgment is being extracted herein:*

"It is well settled law that reversal of acquittal is permissible only if the view of the Trial Court is not only erroneous but also unreasonable and perverse. In our considered opinion, the view taken by the Trial Court was a possible view, which was neither perverse nor unreasonable, and in the facts and circumstances of the present case, ought not to have been reversed or interfered with by the High Court."

10. Similarly in the case of ***Mrinal Das & Others v. The State of Tripura 2011(9) SCC 479****, this Court held that interference in a judgment of acquittal can only be made if the judgment is "clearly unreasonable" and there are "compelling and substantial reasons" for reversing the acquittal. The relevant paragraph of the judgment is being reproduced herein:*

"An order of acquittal is to be interfered with only when there are "compelling and substantial reasons", for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed".

11. As can be seen from the above-mentioned judgments, an additional layer of protection is granted to an accused in cases where the accused already enjoys an acquittal. In the present case, we are in agreement with the decision of the High Court. From a perusal of the judgment of the Trial Court, it can be seen that no perversity has been committed by the Trial Court while reaching its conclusion. All the evidence on record has *been carefully perused and a detailed analysis has been carried out to come to the conclusion.*

12. In such circumstance, we find no reason to interfere with the decision of the Trial Court as well as the High Court."

12. Coming to the facts of the case, the learned trial Court, while acquitting the respondent No.2-accused, returned the following findings :-

"8. In the present case, the complainant has appeared in the witness box as PW-4 and stated that he has applied for DDA flat in Rohini and had also filed an application wit form no.0871413 through code no.41, 46, 61, 62, 63 through State Bank of India after depositing of Rs.5,050/- dated 15.9.2008. After three months of depositing the form draw was declared by the DDA and a telephonic message was received by the complainant from the accused. The accused impersonated himself to be employee of DDA department and told him that he got successful in a draw of DDA and a flat of DDA is declared in his name. The accused also directed the complainant that without any delay he should deposit a sum of Rs.21450/- in the account no.01541500798 of ICICI Bank of accused, otherwise his flat will be cancelled. The complainant deposited Rs.21450/- on 17.12.2008 in the bank account of accused. After few days, the accused came to Hisar and demanded a sum of Rs.1,50,150/- as an installment of the plot. After few days, the complainant and her relative Raj Kumar went to Delhi then it was found that the flat is belonged to some other persons. The complainant feel surprised and inquired the matter from DDA department Delhi then it was found that the accused made fool of the complainant and also grabbed the amount from the complainant. In this way, he alleged that the accused committed fraud upon the complainant. Apart from the oral evidence the complainant has produced Ex.P7 i.e. copy of application form supply to DDA Delhi.

The postal receipts Ex.P3 to Ex.P6 and Ex. PW1/A is the complete documents submitted with the application alongwith the loan kit from the SBI.

Hence, from the documents produced by the complainant and testimony of PW1 and PW3, it is only established that complainant has applied for DDA flat and loan from the bank. This particular fact is not at all disputed and it is clear that he has applied for the DDA flats. But to prove an offence under Section 420 of IPC against the accused the complainant is required to prove that he was deceived by the accused person for transferring the money in his account and accordingly he has dishonestly gained something which he was not ought to gain in a rightful manner. The witness of the complainant i.e. PW-3 Mahipal clearly stated that flat of the complainant was declared unsuccessful and the money transferred from the SBI bank as a security amount on the application of the complainant was returned to the SBI Bank on 18.12.2008 itself. When the flat was declared unsuccessful and the money was transferred to the SBI on 18.12.2008 itself then his draw must have been declared unsuccessful on 17.12.2008/18.12.2008 itself. But from the version of the complainant, it is seen that a call was made to him by the accused on 17.12.2008 and on the same day he deposited amount of Rs.21450/- in his account. So, when the draw was cancelled on the same day then it is not explained by the complainant that for what purposes he deposited the amount in the account of the accused. It does not appeal to a reasonable mind that why the complainant transferred the amount into the account of the accused when the flat was declared unsuccessful by the authority and security amount was also returned back to the bank by DDA, Delhi. The complainant is not able to prove by way of call records that he received a call from the accused as alleged. The transaction made into the account of the accused is a cash transaction and PW2 stated that it *cannot be said that who deposited the amount and from where, hence, the onus is upon the complainant to prove that he deposited the same on the deception made by the accused. The deception alleged by the complainant, that he deposited the amount of Rs.21450/- to avoid the cancellation of his DDA flat, is unbelievable for the above stated reasons. The complainant again and again submitted in his complaint that accused was working in DDA whereas in his cross-examination itself he submitted that accused do not work in DDA rather in MCD Delhi. Therefore, the story put forth by the complainant is highly doubtful and it seems to be a case of monetary transaction, if any, between the complainant and the accused but but not a transaction which can constitute an offence under Section 420 of IPC. That dishonest intention of the accused since the beginning is not proved by the complainant beyond reasonable doubt before the court. Even on the perusal of the report of police under Section 202 Cr.P.C., the father and wife of the complainant has clearly stated that the complainant is having some monetary relationship with one Jagbir of Delhi but they do not uttered even a single word that he was deceived by accused Jagbir. Hence as mentioned earlier, the transaction, if any, between the accused person and the complainant is a case of civil nature which is given a criminal colour by way of this complaint.*

9. Hence, the complainant completely failed to prove the case against the accused person beyond reasonable doubt. In these circumstances, the accused is entitled to the benefit of doubt. Therefore, after extending the benefit of doubt, I acquit the accused person from the charges levelled against him. His bail bonds and surety bonds stands discharged. File be consigned to the record room after due compliance."

13. The perusal of the findings given by learned Magistrate shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. Applicant-complainant had miserably failed to show any error of law or on facts on the basis of which interference can be made by this Court in the judgment under challenge.

14. When the findings given by the trial Court are considered in the light of the legal position indicated above; no interference is called for; especially when the applicant-complainant has failed to point out any substantial or compelling reasons for interfering in the impugned judgment dated 02.02.2018 passed by learned Judicial Magistrate Ist Class, Hisar.

15. No other argument was raised.

16. In view of the above discussion, the instant application under Section 378(4) of the Code of Criminal Procedure, is bereft of any merit and the same is accordingly dismissed.

17. All pending application/s, if any, shall stand closed.

April 24th, 2023 **(HARSH BUNGER)**
gurpreet **JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

GURPREET KAUR
2023.07.03 14:46
I attest to the accuracy and
authenticity of this order/judgment