

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

239

CRR-1600-2015

Date of decision: 17.04.2023

Satya Prakash

...Petitioner

Versus

Mool Chand and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Ajaivir Singh, Advocate for the petitioner

Mr. Dhruv Sihag, AAG, Haryana

AMAN CHAUDHARY. J.

1. The present revision has been filed against the judgment dated 21.01.2015 passed by the Additional Sessions Judge, Faridabad whereby the judgment dated 06.03.2013 and order of sentence dated 12.03.2013 passed by the JMIC, Faridabad convicting the respondent were set aside.

2. Briefly put, the facts of the case are that the complainant-petitioner filed a complaint before the Deputy Commissioner of Police, Faridabad stating therein that respondent No.1 deceived him on the pretext of getting him a government job, for which, he paid a sum of Rs.60,000/- to him. On having not got any job, the complainant requested for return of the amount, however, only Rs.5000/- were returned. Based on these allegations, FIR No. 125 dated 17.03.2006 was registered against accused-respondent No.1. After investigation, challan was presented in the Court. He was charge sheeted under Sections 420/406 IPC, to which, he pleaded not guilty and claimed trial.

3. To prove its case, the prosecution had examined six prosecution witnesses. On closing of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. all the incriminating material was put to him. He denied the allegations and claimed false implication by the police. However, he did not examine any witness in his defence.

4. On scrutinizing the evidence led by the parties and hearing the counsel, the trial Court convicted accused-respondent No.1 under Section 420 IPC and sentenced him vide judgment/order dated 06/12.03.2013 to undergo rigorous imprisonment for three years with a fine of Rs.2000/-, in default of payment of fine, to further undergo RI for one month.

5. Aggrieved the convict-respondent No.1 filed an appeal, which was allowed by the learned Additional Sessions Judge, Faridabad vide impugned judgment dated 21.01.2015.

6. Hence the present revision.

7. The pith and substance of the submissions advanced by learned counsel for the complainant-petitioner is that the judgment of the trial Court was well reasoned and based on evidence on record, which has been wrongly set aside by the lower appellate Court without also appreciating the fact that in the written compromise Ex.PW1/B, the said accused-respondent himself acknowledged and admitted his liability towards the petitioner.

8. Heard the learned counsel for the petitioner and perused the record.

9. It would be worthwhile to make a reference to the judgment of the lower appellate Court, relevant paras whereof read thus:

“12. According to complainant, appellant-accused had promised to provide employment. But surprisingly

appellant is a common man. He does not hold any authority. He is not in power. He is not office bearer of any political party so as to provide job to complainant by exercising his influence in the establishment. There is nothing in prosecution evidence to show that he was in such a position. So, this claim that he received Rs.60,000/- to provide employment to complainant does not inspire any confidence.

13. According to complainant, he had arranged Rs.60,000/- from his maternal uncle. But that uncle has not been examined to prove it. Whereas complainant claims himself to be a poor person. Prosecution has relied upon a settlement which had allegedly taken place in Police Post Sector 16A, Faridabad. But its original has not come on record. Its author has not been examined. Even PW6 IO of this case failed to say anything about this compromise. In such situation, no reliance can be placed upon this document.

14. There is one more aspect. If this document is believed, then its last line says that it was a case of money transaction with mutual consent. It does not say that appellant had received this amount and promised to provide any employment to complainant. It does not speak about any fraud or cheating. So, this document itself does not say that accused person had received this amount by promising an employment to complainant. No other person except his mother Smt. Chameli PW3 has appeared to prove payment.

15. Moreover, allegedly this amount was advanced in 2002. No action was taken till 2005 or 2006. When it was clear that accused was not in a position to arrange any employment for him, he was not required to wait for 2-3 years. Complainant as well as his mother have admitted that Ram Gopal was punished in a case between accused and Ram Gopal. So, it can be a reason for him to depose against appellant-accused.”

10. 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 Section 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.”

11. In **Sunil Kumar Sambhudayal Gupta and others vs. State of Maharashtra**, (2010) 13 SCC 657, Hon’ble The Supreme Court framed the guidelines for the appellate court to deal with the matter of “appeal against acquittal”, which read thus:-

“Appeal against Acquittal:

38. It is a well-established principle of law, consistently reiterated and followed by this Court is that while dealing with a judgment of acquittal, an appellate court must 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. Even though the appellate court is entitled to consider, whether in arriving at a finding of fact, the trial Court had placed the burden of proof incorrectly or failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law; 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. The trial court which has the benefit of watching the demeanor of the witnesses is the best judge of the credibility of the witnesses.

39. Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India. The nature of the offence, its seriousness and gravity has to be taken into

consideration. 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 with the decision of the Trial Court in a casual or cavalier manner where the other view is possible should be avoided, unless there are good reasons for such interference.

40. 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 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. A 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. (See: Balak Ram & Anr. v. State of U.P., AIR 1974 SC 2165; Shailendra Pratap & Anr. v. State of U.P., AIR 2003 SC 1104; Budh Singh & Ors. v. State of U.P., AIR 2006 SC 2500; S. Rama Krishna v. S. Rami Reddy (D) by his LRs. & Ors., AIR 2008 SC 2066; Arulvelu & Anr. v. State, (2009) 10 SCC 206; Ram Singh alias Chhaju v. State of Himachal Pradesh, (2010) 2 SCC 445; and Babu v. State of Kerala, (2010) 9 SCC 189)."

12. Hon'ble The Supreme Court in **Jafarudheen and Others vs. State of Kerala** 2022 SCC Online SC 495, it was held that, "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."

13. Hon'ble The Supreme Court in the case of **Ram Biraji Devi and another vs. Umesh Kumar Singh and another**, (2006) 6 SCC 669 observed that in case of breach of agreement between the parties or refusal to execute agreement cannot be termed as cheating or misappropriation and the same amounts to civil liability.

14. In the case in hand, the lower appellate Court has rightly recorded that the accused-respondent did not hold any authority to provide jobs. The amount was arranged by the complainant-petitioner from his uncle, however, he did not examine him to prove the same. Further, in the compromise, there was no mention of the amount paid in lieu of getting a job. More so, the petitioner remained quiet for a long period of time. There is no evidence that he ever made any complaint to the police or any authority in this regard. Thus, it was rightly observed and held that there was no reason to believe the story put forth by the petitioner.

15. 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.

16. Learned counsel for the petitioner has not been able to point out any illegality or infirmity in the aforesaid findings as returned by the learned appellate Court. Moreover, after an elaborate consideration of the case put forth by the complainant as well as the accused and appreciating the evidence on record, it came to a correct conclusion. This Court finds no compelling and substantial reason to interfere with the judgment of acquittal.

17. Sequelly, the present revision being bereft of merit is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

17.04.2023
Mehak

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