

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

227

CRR-54-2016

Date of Decision : 11.05.2023

Amrik Singh

..... Petitioner

Versus

Gurdip Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Gunjeet Brar, Advocate for
Mr. Vikas Singh, Advocate
for the petitioner.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition is seeking setting aside of order dated 27.07.2015 whereby Additional Sessions Judge, Mansa has dismissed appeal of the petitioner against judgment dated 24.01.2012 whereby Sub Divisional Judicial Magistrate, Sardulgarh has acquitted respondents in complaint No.30 dated 17.08.2007.

2. Case of the petitioner is that on 13.05.2007, Shagan ceremony of petitioner-complainant was to be performed. On 12.05.2007, the petitioner along with his cousin Darshan Singh had gone to Mansa to purchase clothes and other articles. He returned back home at 12.30 p.m. At about 1.00 p.m., he went to toilet to answer the call of nature. When he came out of toilet, he found accused standing outside the toilet. The accused/respondents attacked upon him and caused injuries. The petitioner raised hue and cry and respondents fled from the spot. The petitioner lodged a complaint with police, however, no action was taken rather FIR

No.35 dated 12.05.2007 under Sections 452/376/511 of IPC was registered against the petitioner and he was arrested on 06.06.2007. The petitioner preferred a complaint before trial Court which summoned the accused to face trial under Sections 323, 324, 325, 148 and 149 of IPC. The charges were framed against respondents, however, trial Court finding no concrete evidence against the respondents acquitted all the accused. The petitioner preferred an appeal before Sessions Court which came up for consideration before learned Additional Sessions Judge, Mansa who vide impugned order dated 27.07.2015 has dismissed appeal of the petitioner.

3. Learned counsel for the petitioner fairly submits that the petitioner has been convicted in FIR No.35 dated 12.05.2007 which was registered at the behest of the respondents. He further submits that the trial Court as well as Appellate Court have misread the evidence led by the petitioner and wrongly acquitted the accused.

4. I have heard the arguments of learned counsel for the petitioner and perused the record.

5. The petitioner has invoked revisionary jurisdiction of this Court. The scope of interference while exercising power of revision against judgment of acquittal is very limited.

6. While adverting with Section 439 of old Criminal Procedure Code which in its present avatar is Section 401, a four judge bench of Hon'ble Supreme Court in ***D. Stephens v. Nosibolla 1951 SCC 184*** has held:

“12. The revisional jurisdiction conferred on the High Court under Section 439 of the Code of Criminal Procedure is not to be lightly exercised, when it is invoked by a private complainant against an order of acquittal, against which the Government has a right of

appeal under Section 417. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice. This jurisdiction is not ordinarily invoked or used merely because the lower court has taken a wrong view of the law or misappreciated the evidence on record.”

7. A two judge bench of Hon’ble Supreme Court after noticing its previous judgments in ***Mahendra Pratap Singh v. Sarju Singh (1968) 2 SCR 287*** has held:

“8. The practice on the subject has been stated by this Court on more than one occasion. In *D. Stephens v. Nosibolla* [1951 SCC 184 : AIR 1951 SC 196 : 1951 SCR 284] only two grounds are mentioned by this Court as entitling the High Court to set aside an acquittal in a revision and to order a retrial. They are that there must exist a manifest illegality in the judgment of the Court of Session ordering the acquittal or there must be a gross miscarriage of justice. In explaining these two propositions, this Court further states that the High Court is not entitled to interfere even if a wrong view of law is taken by the Court of Session or if even there is misappreciation of evidence. Again, in *Logendranath Jhav. Polai Lal Biswas* [1951 SCC 856 : AIR 1951 SC 316 : 1951 SCR 676] this Court points out that the High Court is entitled in revision to set aside an acquittal if there is an error on a point of law or no appraisal of the evidence at all. This Court observes that it is not sufficient to say that the judgment under revision is ‘perverse’ or ‘lacking in true correct perspective’. It is pointed out further that by ordering a retrial, the dice is loaded against the accused, because however much the High Court may caution the subordinate court, it is always difficult to re-weigh the evidence ignoring the

opinion of the High Court. Again in K. Chinnaswamy Reddy v. State of A.P.[AIR 1962 SC 1788 : (1963) 3 SCR 412] it is pointed out that an interference in revision with an order of acquittal can only take place if there is a glaring defect of procedure such as that the Court had no jurisdiction to try the case or the Court had shut out some material evidence which was admissible or attempted to take into account evidence which was not admissible or had overlooked some evidence. Although the list given by this Court is not exhaustive of all the circumstances in which the High Court may interfere with an acquittal in revision it is obvious that the defect in the judgment under revision must be analogous to those actually indicated by this Court”.

8. The Hon’ble Supreme Court in a catena of judgments while dealing with scope and powers of the appellate/revisionary courts in dealing with an appeal/revision against an order of acquittal has elucidated:

- (i) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.
- (ii) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
- (iii) 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 emphasise 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.

- (iv) 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 is 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.
- (v) 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.

9. The relevant extracts of impugned order read as :

“To prove his version, complainant Amrik Singh himself appeared as CW1 and he also examined his father Sukhdev Singh as CW3 and Dr.Sohan Lal as CW2. Perusal of file shows that no independent witness was examined by the complainant to corroborate his version. CW-3 Sukhdev Singh is interested witness as he is father of complainant. Moreover, CW-3 Sukhdev Singh

has not seen the alleged occurrence which had taken place in the house of accused and when complainant Amirk Singh was coming after escaping himself from the clutches of accused, then CW-3 Sukhdev Singh had met him in the street. Perusal of statement of CW-1 Amrik Singh complainant reveals that he had made so many improvements while deposing his version in the Court because as per the case of complainant, the complainant was given beatings in the house of accused and then, he raised raula, upon which, his father, mother and sister had come in the street, whereas CW-3 Sukhdev Singh deposed in the Court that he had heard the raula and then, he came out and at that time, he had seen that accused was dragging his son to their house. Complainant Amrik Singh has not pleaded in his complaint when he was being dragged by the accused then his father was present there. Statement of CW-3 Sukhdev Singh does not inspire the confidence of this Court. Apart from this, CW-1 Amrik Singh deposed in his statement that accused had covered his mouth, so he could not raise raula. He does not know whether he had got mentioned these facts in his complaint or not. Then, CW-1 Amrik Singh was confronted with his complaint wherein it was not so recorded. CW-1 Amrik Singh further deposed in his statement that he does not know whether his parents moved any written application or not. He does not know when they had gone to police station. Apart from this, it has come into evidence that a criminal case bearing FIR No.35 dated 12.05.2007 u/s 452/376/511 IPC P.S. Jhunir was registered

against complainant Amrik Singh in police station Jhunir, in which, complainant was convicted and sentenced lateron and accused party of the present complaint is complainant party of that criminal case. In these circumstances, after going through above said evidence led by complainant, I am of the considered view that due to registration of above said FIR in police station Jhunir against complainant, the complainant has filed the present complaint just to rescue him from the proceedings of said FIR.”

10. From the perusal of above quoted findings, it is quite evident that petitioner was accused in FIR No.35 dated 12.05.2007 and he has been finally convicted. The afore-said FIR was lodged by respondents against petitioner and he with intent to save himself from the clutches of law and to create false defence had filed complaint against respondents.

The findings recorded by the trial Court as well as Appellate Court qua allegations of petitioner seem to be reasonable as well as convincing. There seems no reason to form an opinion contrary to opinion formed by both the Courts below.

11. In view of the above narrated facts, having regard to the findings recorded by Trial Court as well as Appellate Court including accepted legal position, this Court is of the considered opinion that in the case at hand there is no infirmity or irregularity in the impugned order whereby Trial Court has acquitted the respondent and order of the Appellate Court whereby appeal of the petitioner has been dismissed. Accordingly, this Court fully agrees with the finding recorded by Trial Court and Appellate Court. The impugned judgment and order being speaking, based

upon correct appreciation of facts, applicable law & judicial precedents and well-reasoned needs no interference of this Court.

12. Dismissed.

(JAGMOHAN BANSAL)
JUDGE

11.05.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>