

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

CRR No.2054 of 2022 (O&M)
Date of decision : 13.12.2023

Yodha Singh

....Petitioner

Versus

Satwinder Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Ritesh Pandey, Advocate
for the petitioner.

Mr. Komalpreet Singh, Advocate for
Mr. A.S. Manaise, Advocate for the respondent.

PANKAJ JAIN, J. (Oral)

Accused is in revision. Challenge is to the judgment dated 29th of March, 2022 passed by the Sessions Judge, Gurdaspur dismissing his appeal against judgment of conviction and order of sentence passed by Judicial Magistrate 1st Class, Batala whereby the petitioner has been found to be guilty for offence punishable under Section 420 of the IPC and has been sentenced to undergo rigorous imprisonment for a period of three years and has been burdened with fine of Rs.3,000/- and in default thereof to further undergo simple imprisonment for 10 days.

2. The petitioner was summoned to face trial on complaint

made by respondent/complainant Satwinder Singh son of Sukhwinder Singh after cheque issued by him bearing No.370716 dated 26th of October, 2015 for a sum of Rs.2,20,000/- drawn on Punjab National Bank, Aliwal, Tehsil Batala was dishonoured on 18th of November, 2015 with the remarks 'No Such Amount'. The petitioner was put to trial. After analyzing the entire evidence threadbare the Trial Court found that the signatures on the cheque leaf were not disputed. The defence was that the cheque was not issued in discharge of any liability. The accused is not named Yodha Singh and he is named only Yoda. There were material contradictions and improvements in the statements of complainant witnesses and thus benefit of doubt should be given to the accused.

3. Trial Court found that the probable defence sought to be raised by the accused could not be proved and held the petitioner guilty. In appeal the said judgment stands affirmed by the Appellate Court.

4. Ld. Counsel representing the petitioner submits that the complainant in pre-charge evidence has examined himself and Manpreet Singh as CW-2. However after charge, no witness was further cross-examined. Moreover, post-charge evidence of the complainant stands closed by order. He further submits that the complainant did not appear in witness box for cross-examination and

petitioner got no opportunity to cross-examine the witnesses. Hence the evidence cannot be read against the petitioner and the conviction of the petitioner is based upon conjectures and surmises. Thus the judgment of conviction is liable to be set aside being bad in the eyes of law.

5. The plea raised by counsel for the petitioner sans merit in view of specific findings recorded by the Appellate Court to the following effect :

“xxx Charge was framed against him U/s 420 IPC vide order dated 03.12.2018. However, after framing of charge, accused failed to conduct cross-examination either upon the complainant or any other witness inspite of the fact that on 20.02.2019 complainant Satwinder Singh and Manpreet Singh were present in the Court. This means that accused failed to rebut the testimony of complainant Satwinder Singh and Manpreet Singh in pre-charge evidence. xxx”

Thus, it is not a case of denial of opportunity but a case wherein accused deliberately missed the same. As a consequence he cannot be allowed to cry foul at this stage.

6. Counsel for the petitioner wants this Court to re-appreciate the entire evidence and has not been able to show any glaring error of law that can persuade this Court to exercise jurisdiction under Section 401 of the Code.

7. Law w.r.t. exercise of revisional jurisdiction of this Court already stands settled by the Apex Court in **Thankappan Nadar vs. Gopala Krishnan (2002) 9 SCC 393**, wherein it has been held as

under :

“6. In a revision application filed by the de facto complainant against the acquittal order, the court's jurisdiction under Section 397 read with Section 401 of the Cr.P.C. is limited. The law on the subject is well settled. Instead of referring to various judgments, we would only refer to few decisions rendered by this Court. In **Akalu Ahir and Others v. Ramdeo Ram,(1973) 2 SCC 583** this Court has (in SCC pp.587-88, para 8) observed thus:

"This Court however, by way of illustration, indicated the following categories of cases which would justify the High Court in interfering with a finding of acquittal in revision:

- (i) Where the trial court has no jurisdiction to try the case, but has still acquitted the accused;
- (ii) Where the trial court has wrongly, shut out evidence which the prosecution wished to produce;
- (iii) Where the appellate court has wrongly held the evidence which was admitted by the trial court to be inadmissible;
- (iv) Where the material evidence has been overlooked only (either) by the trial court or by the appellate court; and
- (v) Where the acquittal is based on the compounding of the offence which is invalid under the law.

These categories were, however, merely illustrative and it was clarified that other cases of similar nature can also be properly held to be of exceptional nature where the High Court can justifiably interfere with the order of the acquittal."

The Court further observed: (SCC p.588, para 10)

"No doubt, the appraisal of evidence by the trial judge in the case in hand is not perfect or free from flaw and a court of appeal may well have felt justified in disagreeing with its conclusion, but from this it does not follow that on revision by a private complainant, the High Court is entitled to reappraise the evidence for itself as if it is acting as a court of appeal and then order a retrial. It is unfortunate that a serious offence inspired by rivalry and jealousy in the

matter of election to the office of village Mukhia, should go unpunished. But that can scarcely be a valid ground for ignoring or for not strictly following the law as enunciated by this Court.

(Emphasis added)”

8. **In Raj Kumar vs. State of H.P., (2008) 11 SCC 76**, Apex Court held that :

“7. **In Duli Chand v. Delhi Administration, (AIR 1975 Supreme Court 1960)**, the scope of invoking jurisdiction of the High Court in criminal revision was examined and it was held in a case involving vehicular accident as follows :

"The question whether the accused was guilty of negligence in driving the bus and death of the deceased was caused due to negligent driving is a question of fact which depends for its determination on appreciation of the evidence. While the Magistrate, and the Additional Sessions Judge arrived on assessment of the evidence at a concurrent finding of fact that the death of the deceased was caused by negligent driving of bus by the accused and the High Court even though justified in refusing to re-appreciate the evidence reviewed the same in order to justify itself that there was evidence in support of the finding and that the finding was not perverse, came to the conclusion that the evidence established the death of the deceased was caused by the negligent driving of the bus by the accused, the Supreme Court on an appeal under Article 136 refused to interfere."

8. **In State of Orissa v. Nakula Sahu and Ors., (AIR 1979 Supreme Court 663)** it was held that the High Court should not have interfered with the concurrent findings recorded by the Trial Court and the Sessions Judge in exercise of revisional jurisdiction when there was no error of fact or law arrived at by the Trial Court or the Sessions Judge. **In State of Kerala v. Puttamana Illath Jathavedan Namboodiri, 1999(1) RCR (Criminal) 808 : (1999**

(2) SCC 452) it was held that the revisional jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate Court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.

9. We find that the trial Court and the Revisional Court have analysed the evidence in detail to come to the conclusion about the guilt of the accused. There is no manifest error in the conclusions or in analyzing the evidence. That being so, the High Court was justified in law in not exercising revisional jurisdiction.”

9. Further, Apex Court in **State Rep. By The Drugs Inspector vs. Manimaran (2019) 13 SCC 670** held as under :

“15.....When there is concurrent findings by the courts below, the High Court ought not to have interfered with the same in exercise of its revisional jurisdiction. The revisional jurisdiction of the High Court is different from the appellate jurisdiction. The High court will not normally interfere with the concurrent findings of fact, unless the findings of fact arrived at by the courts below is perverse or that the court has ignored the material evidence while arriving at that finding. As held in **State of Kerala v. Puttumana Illath Jathavedan Namboodiri (1999) 2 SCC 452**, ordinarily it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as by the Sessions court in appeal. When the courts below recorded the concurrent findings of fact, in our view, the High Court was not right in interfering with the concurrent findings of fact arrived at by the courts below and the impugned order cannot be sustained.”

10. In view of above, this Court does not find any reason to interfere in the present revision petition in the absence of there being any glaring error of law. Resultantly, the present revision petition is dismissed.

December 13, 2023	(Pankaj Jain)
Dpr	Judge
Whether speaking/reasoned :	Yes
Whether reportable :	Yes