

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

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CRM-A-279-2019

Date of Decision: 11.09.2023

Harjinder Singh

...Applicant

Vs.

Gurbax Singh and others

...Respondents

**CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT**

Present : Mr. Vaneet Thakur, Advocate, for  
Mr. Arun Takhi, Advocate, for the applicant.

**N.S.SHEKHAWAT, J. (Oral)**

1. The applicant has filed the present application under Section 378(4) Cr.P.C. with a prayer to grant special leave to appeal against the impugned judgment dated 20.10.2018 passed by the Judicial Magistrate 1<sup>st</sup> Class, Hoshiarpur, whereby, the respondents were ordered to be acquitted of the charge.

2. The complaint was filed in the present case by Harjinder Singh by alleging that Gurbax Singh and Ashok Kumar respondents No. 1 and 3/accused approached him and asked him to start the business as commission agent for food grain at Shamchaurasi, Teshil and District Hoshiarpur and a partnership deed was executed between them. Another agreement dated 23.07.2010 was also executed by Gurbax Singh, accused, vide which, the the land at Pandori road, Shamchaurasi was handed over to the Firm for a period of 10 years and it was further agreed by Gurbax Singh respondent No. 1 that he

would not charge rent for the said land. Respondents No. 1 and 3/accused asked the applicant to construct a shed and pucca floor on the land of respondent No. 1 after spending more than 08 lacs from his own pocket and after a period of 10 years, the shop and the pucca floor shall be exclusive ownership of respondent No.1. The applicant constructed a shed and pucca floor in the land of Gurbax Singh and the business was started under the name and style of M/s Baba Jawahar Dass Traders. After the commencement of the ownership, a property of amount of Rs. 8 lacs was arranged by the said Firm and the account books were in possession and were maintained by the respondents No. 1 and 3. When the applicant demanded his share in the profit, both the respondents No. 1 and 3/accused intentionally and illegally delayed the matter on the one pretext or the other and did not furnish the account of profit to him nor the profit was shared with him. The accused intentionally misappropriated the profit from the sale of paddy crop and wheat crop of the said Firm. The respondents No. 1 and 3 in active connivance with other accused, had withdrawn the amount lying in the bank amount of the Firm, without informing the applicant and another Firm was created in the name of Paramjit Kaur wife of Ashok Kumar and Gurdish Kaur wife Gurbax Singh on 01.10.2011. Even, the name of the Firm was changed and various amounts were misappropriated by the accused. Even, despite his requests, profit was not shared with the present applicant. The

applicant made a complaint to the SSP Hoshiarpur against the accused but no action was taken by the police in the present case. With these broad allegations by the applicant/complainant, the complaint was registered in the present case.

2. On the basis of the initial/preliminary evidence, the respondents were ordered to be summoned to face trial for the offences punishable under Sections 406, 420, 468, 477, 477-A and 120-B of IPC.

3. In the pre-charge evidence, CW1-Harjinder Singh applicant stepped into the witness box and also examined Mohan Singh as CW2. Finding the prima facie case against the respondents, they were charge under Sections 406 and 420 IPC, to which, they pleaded not guilty and claimed trial.

4. Additional evidence was adduced in the after charge evidence, CW1-Harjinder Singh applicant stepped into the witness box and examined Mohan Singh as CW2 and the applicant closed the pre-charge evidence.

5. Statements of the respondents under Section 313 Cr.P.C. were recorded, in which, the accused denied all the imputations against them and pleaded false implication.

6. Learned counsel for the applicant submitted that the impugned judgment is based on the misappreciation of evidence led

by the present applicant. In fact, the partnership deed Ex.PA was entered into between the applicant and respondent No. 1 and 3 on 23.07.2010 and as per the terms of the partnership deed, the profit was to be shared with the present applicant. However, the respondents had operated the bank accounts on their own and had siphoned off the various amounts from time to time and no profit were shared with him. Learned counsel further submitted that from the evidence led by the prosecution, it was apparent that there was sufficient incriminating evidence to prove the complicity of the respondents in the present crime.

7. I have heard learned counsel for the applicant and perused the record.

8. The main allegations levelled by the applicant in the present complaint was that all the accused had colluded with each other and with a view to cheat the applicant, they had misappropriated the entire profit and the various amounts lying in the bank accounts of the Firm without any information or notice to the applicant. He had further alleged that another Firm in the name of Parmajit Kaur and Gurdish Kuar, i.e., wives of respondents No. 1 and 3 was created vide another partnership deed dated 01.10.2011 and the entire business of the applicant was usurped. However, even from the contents of the complaint, it was evident that it was a simple civil dispute between

the parties. Even, the complaint was made by the applicant to the SSP and the Inquiry Officer had recorded the statements of both the parties. CW Harjinder Singh, applicant had also admitted that the inquiry officer had found that the present case was of money transaction only and not a case of cheating. He further specifically admitted that both the parties had compromised the matter on 19.04.2012 and the copy of the compromise was marked as Mark-A. Even, the applicant had specifically admitted that as per the agreement, his share was determined as Rs. 5.68 lacs and the amount was received by him vide Cheque No. 348459 and Cheque No. 348460 on dated 05.05.2012 and 05.07.2012, respectively. Apart from that, from the allegations levelled by the applicant in complaint, it was clear that at the most, the applicant could have filed a civil suit regarding his money transactions against the respondents. Even, he admitted that he had filed a civil suit on 20.11.2012, he did not remember when he had withdrawn that civil suit. Thus, the trial Court has rightly held that the complaint has been filed in the present case with regard to a civil dispute between parties and the respondents have been rightly acquitted by the trial Court. I have gone through the findings recorded by the trial Court carefully and it did not suffer from any illegality.

9. It has been held by the Hon'ble Supreme Court in the matter of **"Bhaskarrao and others Vs. State of Maharashtra"**, **2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228** as follows:-

*"14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in **Tota Singh and Anr. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974** -*

*"The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappraisal, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a reappraisal of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The*

*jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."*

**15. In *Ramesh Babulal Doshi v. State of Gujarat*, 1997(3) RCR (Criminal) 62 : 1996 CriLJ 2867, this Court observed:**

*"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek*

*an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."*

10. Keeping in view the above referred discussion and the law laid down by the Hon'ble Supreme Court, it can be safely concluded that the impugned judgment passed by the learned trial Court is based on sound reasons and there does not seem to be any illegality or perversity in the appreciation of the evidence by the trial Court.

11. Sequally, the application for special leave to appeal sans merit and is accordingly ordered to be dismissed.

12. All pending applications, if any, are disposed off, accordingly.

11.09.2023

( N.S.SHEKHAWAT)

amit rana

JUDGE

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