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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-3310-2018 (O&M)

Date of decision: 22.09.2023

State Bank of India

…Petitioner

Vs.

Vinit Ahuja and another …Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Vikas Chatrath, Advocate,
For the petitioner.

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ARUN MONGA, J. (ORAL)

CRM-35140-2018

For the reasons mentioned in application, same is allowed and delay of 288 days in filing the instant revision petition is condoned, subject to all just exceptions.

CRM-35141-2018

Allowed as prayed for, subject to all just exceptions.

Main case

Instant petition has been filed by the complainant against judgment/order dated 28.01.2016 passed by learned Chief Judicial Magistrate, Hisar vide which petitioner was acquitted of the charge levelled against him in FIR No.533 dated 20.06.2012, under Sections 409, 420, 467, 471, 477A of the Indian Penal Code, 1860 (for short 'IPC') at Police Station, City Hisar, as well as judgment dated 18.08.2017 passed by learned Additional Sessions Judge, Hisar, whereby appeal against the judgment of acquittal dated 28.01.2016 filed by complainant-petitioner, was dismissed.

2. Brief facts of the case in hand, as recorded by learned Appellate Court in the impugned judgment, are reproduced as under:

> *2. Brief facts of the prosecution case are that on 17.6.2012, Anil Jindal, Branch Manager, State Bank of India, Branch New Grain Market, Hisar moved an application addressed to the Station House officer, Police Station City, Hisar to the effect*

> *that Sh. Vinit Ahuja son of Sh. Ashok Ahuja, resident of 826, Sector 14-Hisar had joined the State Bank of India on 15.12.2010 as Assistant in Branch New Grain Market, Hisar. He was posted as Single window operator for making payments, accepting deposits, transfer of funds as per depositor s instructions and other banking jobs assigned to him as a single window operator. In the first week of 2 May, 2012, some illegality and irregularities were deducted in which funds of the bank have been found misappropriated. In primary enquiry, it was found that some illegality and irregularity has been done by him. The matter was informed to the higher authority of State Bank of India at Regional Business office, Hisar. Sh. Vinit Ahuja approached the NGM Branch on 6.6.2012 and handed over a written confession letter dated 06.06.2012 signed by him and photocopy of the same was enclosed with the complaint. The Regional Business Office, Hisar transferred him to Kalanwali Branch where he did not join. He was suspended from service of the bank on 11.6.2012. Now the Regional Business Office, Hisar has directed the New Grain Market Branch of State Bank of India to report the matter to the police for further investigation into the matter and taking of necessary action. Hence, this complaint. On the basis of this complaint/letter, formal FIR was lodged and the matter was investigated. Site plan of the place of occurrence was prepared. Accused was arrested. Statements of the witnesses under Section 161 Cr.P.C. were recorded. After completion of investigation, challan was presented to the court."*

3. Learned counsel for the petitioner submits that after presentation of the Challan the Trial Court framed charges against accused Vinit Ahuja on 03.12.2013 under Sections 409, 420 of the Indian Penal Code, 1860 which were later on amended on 29.10.2015 under Sections 409, 420, 467, 471, 477A of the Indian Penal Code, 1860. During the course of trial, Anil Kumar Jindal, Manager, SBI, New Grain Market, Hisar appeared as PW-8 and deposed on 01.03.2012 to the effect that one Parveen Kumari had reported *qua* a wrong entry of Rs.50000/-. Thereafter he sorted out her voucher on which signatures of Parveen Kumari were not found. The matter was brought to the notice of Regional Office and Regional Office directed for conducting of an inquiry through Sh. Mange Ram Mehra, who later on submitted his report to the Regional Office Hisar. On 06.05.2012 an explanation from Vinit Ahuja was sought. On 06.06.2012 accused Vinit Ahuja made a written confession. Accused Vinit Ahuja, during his absence period, on 11.06.2012, was transferred to Kalanwali Branch. During the inquiry, it was found that funds of 53 account holders have been misappropriated by filling 384

vouchers by accused Vinit Ahuja. Anil Kumar Jindal proved on record withdrawal, deposit, transfer, statement and account statement (Ex.PW-8/1 to Ex.PW-8/179) which were taken into possession by the police vide recovery memo. He also proved the confessional statement of Vinit Ahuja as Ex.PW-8/180 which was also taken into possession by the police.

3.1 He further submits that the prosecution also examined Sh. Harshwardhan, Assistant Director (Documents), FSL, Haryana as PW-11 who submitted his report as Ex.-PX regarding comparison of writing and signatures of accused Vinit Ahuja on the written confession Ex.PW-8/180. However, inspite of overwhelming evidence led by the prosecution the Courts below have acquitted accused Vinit Ahuja on flimsy grounds that prosecution failed to establish as to when and by whom the alleged confession was handed over to police; as to when the accused was arrested and produced before the Court and his specimen handwriting and signatures were obtained; the alleged confession has been made to a person in authority the prosecution has examined only 2 account holders i.e. Bhagirath as PW-5 and Bir Singh as PW-2 out of whom Bhagirath had turned hostile; PW-8 Anil Jindal had admitted that there is no written complaint against accused Vinit Ahuja from any of the account holders; although vouchers Ex.PW8/1 Ex.PW/8/179 were taken into possession but signatures available on these vouchers were never compared with specimen signatures of the accused Vinit Ahuja. Both the Courts below wrongly held that in view of the above noted circumstances, the evidence actually led by prosecution was insufficient to hold accused Vinit Ahuja guilty of alleged offence, leading to his acquittal.

3.2 He further submits that confession of an accused is best piece of evidence against him. In the alleged confession accused Vinit Ahuja had admitted that he had forged 23 accounts, misused IDs and passwords of other bank officials without their consent and had settled all the accounts of the aggrieved depositors; had submitted list of 23 account holders whose accounts were forged by him; has submitted reason for committing forgery because he had suffered loss to the tune of Rs. 17,00,000/- up to 10.01.2012 in the stock market and was to repay that amount, hence committed the above forgery. The Courts below failed to take notice of the fact that the said confession was made by accused Vinit Ahuja before Anil Jindal Bank Manager PW-8 before lodging of the FIR. However, Courts below also overlooked the fact that the specimen handwriting/signatures of accused Vinit Ahuja were taken before Tehsildar, Hisar who was the competent authority. In these circumstances there was sufficient evidence led on file to show that the respondent-accused was liable to be convicted.

3.3 Learned counsel for petitioner further submits that even in the preliminary inquiry it was found that there was illegality and irregularity done by the accused which led to the matter being informed to the Higher Authorities. Vinit Ahuja had approached the Branch Manager NGM Branch on 06.06.2012 and handed over the confession which was exhibited as Ex.PW-8/180. In it, he admitted making forged and fictitious transactions in 23 accounts, he admitted misuse of IDs and passwords of other colleagues, settlement of accounts of the affected depositors, he had submitted the reasons for doing the fictitious and forged transactions since he required money as he had suffered losses on account of loss in shares and also he had confessed in respect of alleged malpractices as well as misappropriation of funds from the account of Umesh Rajesh for Rs1,20,000/-. The cross examination of PW-8 dated 03.03.2005 is also relevant for holding the respondent-accused as guilty. Further urges that the statement of the IO is also relevant for setting aside the judgments rendered by the Courts below.

4. I have heard the learned counsel for petitioner and gone through the case file.

5. Order dated 28.01.2016, passed by learned Chief Judicial Magistrate, Hisar, assailed herein, is premised, *inter alia*, on the following reasoning:

"45. Otherwise also, the confession Ex.PW10/D is admittedly a confession made by an employee of a bank to the Branch Manager i.e. to a person in authority. Therefore, the plea of defence that the confession was obtained by undue pressure becomes a probable one. The statement of PW8 Anil Jindal recorded by the police under section 161 Cr.P.C. specifically mentions that PW8 Anil Jindal had threatened accused Vinit that his job will be lost and under that threat, the confession Ex.PW10/D had been obtained. During his cross-examination, PW8 Anil Jindal was also confronted with this portion of his statement A to Al under section 161 Cr.P.C. Ex.DI and he had refused to have made such statement to the Investigating Officer. However, the Investigating Officer PW10 Rajender Parshad while appearing before the court as PW10 has categorically proved the recording of such statement with such specific portion A to Al made by PW8 Anil Jindal. As such, the version of defence that the confession Ex.PW10/D was obtained by PW8 Anil Jindal who was the person in authority over the accused and was obtained under threat becomes probable and as such, the confession Ex.PW10/D does not stands proved to be a voluntarily confession and thereby, becomes inadmissible as per section 24 of Indian Evidence Act, 1872. In this regard my views are fortified by law cited in Gulzari Lal Meena Vs. State of Haryana (Supra) (cited by learned defence counsel), wherein the Hon'ble Punjab & Haryana High Court has held that where the document Ex.PX has been given and presented by the petitioner to a person in authority, such a confession is not admissible under section 24 of the Act. Similarly, in Karnail Chand Vs. State of Punjab (Supra) (cited by learned defence counsel), it has been held by Hon'ble Punjab & Haryana High Court that it is dangerous to allow a man to be convicted on the strength of a confession unless it is made voluntarily and unless he realizes that anything he says may be used against him. In the case in hand as well, the statement of PW8 Anil Jindal Ex.D1 does not render the confession Ex.PW10/D voluntarily and the fact that it was made to a person in authority makes it highly unsafe to rely upon the confession Ex.PW10/D. Otherwise also, an extra judicial confession by itself is not a substantive and conclusive piece of evidence to fix the criminal liability of the accused. At the most, an extra-judicial confession can be treated as a corroborative piece of evidence and it is not by itself a sufficient evidence to convict the accused on its sole basis.

46. The prosecution has further relied upon the copy of refund vouchers and account statement of several account holders as Ex.PW8/1 to Ex.PW8/179. As per the version of prosecution, the accused had withdrawn the amount from the accounts of the customers of the bank by way of signing himself on the withdrawal form vouchers and had lateron deposited the amount back on being caught. The prosecution has also produced a calculation of the loss of interest to the account holders due to the alleged action of accused. However, out of those account holders, prosecution has examined only two witnesses i.e. Bhagirath as PW5 and Bir Singh as PW2PW5 Bhagirath has turned hostile towards the prosecution and has refused to support the prosecution versionPW5 Bhagirath has specifically stated that nobody had withdrawn money from his account. He has refused having made statement Ex.PW5/A to the police. He has nowhere alleged that the withdrawal vouchers/forms pertaining to his account do not contain his signatures. Another

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witness PW2 EASI Bir Singh has also admitted in his cross-examination that there was no withdrawal from his account. None of the remaining account holders have come forward to state that withdrawal form/vouchers do not bear their signature or that the transactions in question were not done by them or was done by any other person fraudulently. PW8 Anil Jindal has admitted in his cross-examination that there was no written complaint against the accused from any of the account-holders. Still, in case the prosecution wanted to establish that the withdrawal forms (voucher Ex.PW8/1 to Ex.PW8/179 contain the signatures made by accused himself the best evidence available with it was to get the signatures available on vouchers/forms compared with specimen signature of accused. However, the signatures on the withdrawal form/voucher have not been shown to be compared with the specimen signature/handwriting of accused Vinit in the FSL report Ex.PX. In these circumstances, the evidence on record is totally insufficient to hold that the withdrawal form/vouchers were signed by accused Vinit himself and not by the account holders or that the transactions in question shown in account of aforesaid account holders were done by the accused himself and not by the account-holders. As such, the prosecution has failed to discharge its onus.

47. Thus, keeping in view my foregoing discussion, I have no hesitation in holding that the prosecution has failed to prove the charges against the accused. In these circumstances, the accused is entitled to the benefit of doubt. Resultantly, after extending the benefit of doubt. I acquit the accused from the charge levelled against him. His bail bonds and surety bonds stand discharged."

6. Relevant part of the order dated 18.08.2017, passed by learned Additional Sessions Judge, Hisar assailed herein containing the discussion is premised, *inter alia*, on the following reasoning:

"19. The arguments are being advanced by the learned counsel for the appellant-complainant that the investigating officer of the case had left lacuna in the case of the prosecution but this fact is not denied by the learned counsel for the appellant-complainant that even before the learned trial court he was assisting the prosecution on behalf of the appellant-complainant bank. If this was the preposition of the facts then it was the duty of the appellant-complainant to get the handwriting over the vouchers compared with the handwriting of the respondent-accused. Even otherwise, merely on the basis of handwriting of the accused over some vouchers he cannot be convicted. The appellant-complainant was required to prove that these vouchers are forged vouchers. Some evidence was required to be led to the effect that the respondent-accused committed the forgery and embezzlement in some accounts of the account holders.

20. From the side of prosecution two witnesses PW2 EASI Bir Singh and PW5 Bhagirath have been examined as the account holders of the bank. Instead of corroborating the version of the appellant- complainant bank both these witnesses have stated that there was no embezzlement in their bank accounts. No other account holder has been examined by the prosecution to state that any *embezzlement was made in his or her bank account. So much so that even the bank account statements in which alleged forgery was committed by the respondent- accused have not been placed and proved on the record.*

21. In absence of these documents, the alleged evidence of the handwriting expert shall be of no use to the case of the prosecution. It has rightly been argued by the learned counsel for the respondent- accused that the evidence of the expert shall be of corroborative value only. So far as the witness the alleged Tehsildar in whose presence the specimen handwriting Ex.PW10/D was obtained is not a necessary witness. The learned trial court has discussed the evidence of PW11 Harsh Vardhan Asstt. Director (Documents) FSL and has held that the same is of no use to the case of prosecution. After perusal of the judgment passed by the learned trial court, it is very clear that the application under section 391 Cr.P.C. has been filed by the appellant- complainant just to fill up the lacuna as pointed by the learned trial court.

22. So far as the alleged explanation/confession is concerned, the same is not Ex.PW10/D rather the photocopy thereof is Ex.PW8/180. Ex.PW10/D is the specimen handwriting of the respondent-accused which was obtained in presence of the Tehsildar. Now the arguments have been advanced that the investigating officer of the case had favoured the respondent-accused and that is why in the statement Ex.D1 under section 161 Cr.P.C. of the branch manager PW8 Anil Kumar Jindal he had added the portion A to A1 about the threat of losing job by the respondent-accused but this Court is unable to accept this argument because if this fact would not have been disclosed by the branch manager himself the investigating officer of the case had no occasion to mention the same.

23. When there is no evidence of any of the victims against the respondent-accused to the effect that from his or her account any money was withdrawn unauthorizedly or he or she suffered any loss, the respondent-accused cannot be convicted. On the record, it is not proved that any of the account holders of the bank has suffered any loss, there arises no question of considering the evidence of the bank that some internal inquiry was conducted in which the irregularities were found to have been committed by the respondent-accused. When the substantive evidence against the respondent-accused is not there, there arises no question for allowing the application u/s 391 Cr.P.C to produce the corroborative evidence.

24. Accordingly, finding no merit in the application u/s 391 Cr.P.C and the appeal, the same stand dismissed."

7. In the instant case, findings recorded by learned trial Court as well as learned Appellate Court are based on correct appreciation of evidence and do not suffer from any infirmity and perversity much less illegality. Thus, no grounds for interference are made out.

8. It is a settled law as has been held in **C. Antony Vs. K.G. Raghavan Nair**[1], that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused unless the judgment suffers from any perversity. In the cases of acquittal, there is double presumption in their favour; first the presumption of innocence, and secondly, the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

9. In **Anil Kumar Gupta vs. State of U.P.**[2], it was held as under:

> "*This Court held 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 an order of acquittal unless it comes to the conclusion that the 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.* ***Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only-reappraise the evidence to arrive at its own conclusions****.*
>
> *(emphasis supplied)*
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> *11. This Court following the decision in Ramesh Babulal Doshi, further observed that 'there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappreciating the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice.*"

[1] **2002(4) RCR (Criminal) 750 SC**

[2] **2001(2) RCR(Criminal) 292 SC**

10. Instant revision petition is hereby dismissed.

11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

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