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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-D-311-DBA of 2003
Date of Decision: 24.05.2024

State of Punjab …Appellant

Vs.

Rampal and others …Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present: Mr. I.P.S. Sabharwal, DAG, Punjab.

None for the respondents.

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N.S.SHEKHAWAT, J.(Oral)

1. The State of Punjab has filed the present appeal against the impugned judgment dated 09.10.2002 passed by the Sub-Divisional Judicial Magistrate, Amloh, whereby, the respondents were acquitted of the charge under Sections 420, 467 and 468 of IPC.

2. The FIR in the present case was registered on the basis of a complaint Ex.PA filed by Naresh Kumar Malhotra, Manager, State Bank of India, Mandi Gobindgarh and the letter Ex.PA, which found the basis of registration of the FIR in the present case, has been reproduced below:-

"To,

The Station House Officer
Police Station, Mandi Gobindgarh

Dear Sir,

Fraudulent encasement of Bank Drafts.

On a review of our transactions relating to payment of Bank Drafts it has been revealed that 22 Bank Drafts as per details given below, purported to be issued by our Parwanoo, Kapurthala and Gagret Branches were actually stolen Bank Drafts and had forged signatures on them. These drafts were collected by Punjab and Sind Bank, Amloh road, Mandi Gobindgarh in clearing on behalf of one M/s Shivam Trading Corporation. On our taking up the matter with Punjab and Sind Bank it was revealed that the said party is non-existent.

We have been advised by Punjab and Sind Bank that they have identified two persons who have encashed cheques from this account.

Date of payment	Date of drafts	No. of drafts	Issuing Branch	Amount	Payee
13.06.90	05.06.90	K 716876	Parwanoo	88425/-	STC
-do-	-do-	K 716877	-do-	85400/-	GSC
21.06.90	14.06.90	K 716878	-do-	89200/-	STC
-do-	-do-	K 716879	-do-	88500/-	REI
25.06.90	15.06.90	K 716880	-do-	92000/-	GSC
-do-	-do-	K 716883	-do-	94100/-	STC
10.07.90	03.07.90	K 716881	Kapurthala	90300/-	STC
-do-	-do-	K 716882	-do-	88500/-	GSC
-do-	04.07.90	K 716884	-do-	94000/-	REI
23.07.90	14.07.90	K 716889	-do-	85000/-	RKG
-do-	-do-	K 716892	-do-	95600/-	REI

-do-	-do-	K 716888	-do-	88900/-	STC
19.07.90	13.07.90	K 716885	-do-	92700/-	STC
-do-	-do-	K 716886	-do-	94050/-	GSC
30.07.90	20.07.90	K 716894	-do-	95800/-	STC
-do-	-do-	K 716896	-do-	93750/-	GSC
-do-	21.07.90	K 716897	-do-	89800/-	STC
13.08.90	04.08.90	K 716887	-do-	95600/-	STC
-do-	-do-	K 716890	-do-	94800/-	GSC
21.08.90	11.08.90	K 716893	Gagret	92900/-	GSC
-do-	-do-	K 716891	-do-	92600/-	STC
21.08.90	13.08.90	K 716898	-do-	96500/-	STC

STC= M/S. Shiva Trading Corporation
GSC=M/S Goel Sales Corproation
REI=M/S Rajesh Enterprises (India).
RKG=Raj Kumar Gupta

Since the amount involved is huge i.e. 20,18,425/- we have entrusted the matter to Central Bureau of Investigation. We shall be thankful if a case is registered and matter investigated to book the culprits and recover the money. We request that it persons as identified by PSB and were arrested then they may be released till they have been interrogated by CBI.

Thanking you in anticipation.

Yours Faithfully
Branch Manager"

3. After the completion of the investigation, the challan was presented against the respondent before the trial Court. After taking into consideration the challan and the documents appended with it, the trial Court found that a *prima-facie* case under Sections 420, 467 and 468 IPC was made out against the respondents/accused. The

respondents pleaded that they were innocent and claimed to be tried. Consequently, the case was ordered to be listed for prosecution evidence.

4. In support of the case of the prosecution, Suresh Malhotra, Branch Manager, State Bank of India, Mandi Gobindgarh appeared as PW1. As per him, on 21.08.1990, received a telegraphic confirmation from the State Bank of India from Gagret Branch that three drafts bearing No. 716893, 716891 and 716898, which were shown to be issued by the branch, were duplicate. On this, he verified their own record and it was found that 22 drafts, which were shown as issued by Kapurthala, Parwanoo and Gagret Branches were not issued by the said branches and the same were forged. On this, he reported the matter to the police vide letter Ex.PA and the information about 22 drafts was written in Ex.PA. He handed over the drafts to the police. In his cross-examination, he admitted that he had demanded the information from Gagret Branch and from other branches, however, he did not hand over the copy of that information to the police. He stated that the telegram was given and the copy of the same was available in their office. He could not tell the reason as to why the information from the remaining branches was not demanded. He admitted that the drafts reported to be issued from Parwanoo and Kapurthala Branches were already encashed. He further admitted that before writing Ex.PA, the matter was referred to CBI. He received the information in this regard from Regional Office, Chandigarh. He did

not produce the copy before the police but the facts were disclosed in Ex.PA. The CBI had conducted the investigation and reply was sent to Regional Office, Chandigarh. The police had registered the FIR as and when the CBI had written about the facts of the case. He did not remember the date when the case was referred to CBI, but it was 8/10 days before. PW2 Satinder Kumar Malhotra stated that he had seen the drafts Ex.PA, Ex.PA/5, Ex.PA/5, Ex.PA/7, Ex.PA/8, Ex.PA/12, Ex.PA/13, Ex.PA/17, Ex.PA/18, Ex.PA/19, Ex.PA/20 and Ex.PA/21, which did not bear his signatures. He remained posted as accountant in SBI, Kapurthala from 14.05.1990 to 31.03.1992 and somebody had attempted his signatures on these bank drafts. Neither the stamps nor the signatures were valid on these drafts. He stated that the bank drafts were not endorsed in Draft Issue Register. However, in cross-examination, he admitted that he had not informed the police that on the advices, his signatures were not there. He further admitted that Mandi Gobindgarh Branch had not sent them any information regarding the disputed drafts. After detecting the fraud, it had come to their notice that the payment had been made by Mandi Gobindgarh Branch. Jaswant Singh, Clerk, Punjab and Sind Bank appeared as PW3. He remained posted as accountant in Punjab and Sind Bank, Mandi Gobindgarh Branch. He stated that on 04.06.1990, he had monitored clearing of drafts and one account bearing No. 2022 was opended in the name of Shivam Tarading Company C/o Raj Kumar. The account was opened by Arminder Kaur Khatra and Parminder

Singh had signed as witness. However, in cross-examination, he stated that he had not brought any record regarding the account opening of Parminder Singh. Arminder Kaur Khatra was in service. Hari Singh, who was posted as Head Cashier in Punjab and Sind Bank appeared as PW4. He also made statement with regard to various cheques, which were presented in their bank and the payment was made. Gurdev Singh, Assistant Cashier, Punjab and Sind Bank, Mandi Gobindgarh appeared as PW5 and he had opened the account in the name of M/A Shivam Trading Company and proved the ledger relating to the said firm. In cross-examination, he admitted that he had no concern with the account opening form Ex.PW5/A and both the forms were not filled in his presence. He did not know Raj Kumar Gupta personally and did not know who had issued the token of the cheques, regarding which the payments were made. The prosecution further examined Karnail Singh, Clerk, Punjab and Sind Bank, Mandi Gobindgarh, who had also made certain payments in the present case and proved the ledger Ex.PW6/A. Mohammed Sadeek Clerk Punjab and Sind Bank, Mandi Gobindgarh was examined as PW7, who stated that certain drafts were produced before him for clearance and vouchers were also attached with the same. All the three drafts were in the name of M/s Shivam Trading Corporation, which had Account No. 2022. Jasbir Singh, Clerk, State Bank of Patiala, Ludhiana, examined as PW8. He received two parcels bearing No. 2421 and 2422, which came from Nasik and after receiving the same, he handed over the parcels to S.K. Kapoor. Kanwalpal Singh Gujral appeared as PW9, who was posted as a clerk in Punjab and Sind Bank Mandi Gobindgarh. He had also received certain credit vouchers in favour of Shivam Trading Company and the draft bearing No. 716894 dated 20.07.1990 was also attached with this. The draft was paid in the account of Shivam Trading Company. The voucher Ex.PW7/H, Ex.PW/I was filled by the party but he did not know who had filled this voucher. However, as per the voucher, it was filled by Raj Kumar Gupta. He did not know as to whether Raj Kumar Gupta was the owner of Shivam Trading Company and it was not signed in his presence. Amrinder Kaur, Manager, Punjab and Sind Bank, Branch Office, Patiala, was examined as PW10, who also deposed the facts with regard to the account of M/s Shivam Trading Corporation, Mandi Gobindgarh and also with regard to deposit of various cheques in the said account. However, in cross-examination, she stated that she did not remember the date, when the payment was made as a period of 07 years elapsed. Jagat Singh had come for receiving the payment and presented the cheques at the counter clerk. He had seen the 16 cheques and there was no cross check on the same. On the said cheques, there was a direction that the payment has not to be made. He admitted that the amount was received in the account of R.K. Gupta and the same was transferred through pay-in-slip. He admitted that the payment was made through cheque. Ajit Singh, Officer, Punjab and Sind Bank, Model Town Patiala appeared as PW11 and his testimony is formal in nature. Sukhdev Singh Bedi appeared as PW12, who was working as Cash Manager in Mandi Gobindgarh Branch in the year 1990 and proved the cheques on record. Jasbir Singh, who was posted as Manager in Punjab and Sindh Bank in the year 1990 and made statement with regard to encashing of certain cheques by him. PW13 Jasvir Singh was a formal witness. Des Raj ASI appeared as PW14, who had joined Ashwani Kumar accused in the investigation and he took out the key of the house from the back side of his rented house and opened the door of the room with the said key and got recovered the amount of Rs. 1.40 lacs from one old trunk lying in the room and the same was recovered. Sohan Lal, who was posted as Manager in PNB Ludhiana was examined as PW15 and brought on record relating to the account opening by Ashwani Kumar. Madan Lal, who was posted as sales tax clerk at Mandi Gobindgarh was examined as PW16 and produced the record relating to the registered firms files. As per record, no firm was registered in the name of Goyal Sale Corporation and Rajesh Enterprises and no person had given any application to register these firms. Kishan Singh PW17 did not support the case of the prosecution and was declared hostile. PW18 B.K. Puri, Manager Account, State Bank of India, who was earlier posted at civil lines Ludhiana was examined as PW18 who produced the record relating to the telegrams sent by him. Pavitar Singh, Clerk, Sale Tax Office, Mandi Gobindgarh was examined as PW19, who stated that neither Shivam Trading Company nor Rajnish

Enterprises were registered firms nor any request for registration was received. S.K.Kapoor, Deputy Manager, Civil Lines Ludhiana was examined as PW20, who had received two parcels from Jasvir Kaur and on opening both the parcels one of them was found correct and the cheque books were found to be correct. He had also informed his Head Office at Chandigarh in this regard. PW21 Ram Parkash, Clerk, State Bank of India, Mandi Gobindgarh, PW22 Umder Bassi, Clerk, State Bank of India, Mandi Gobindgarh, PW23 Kulbhushan Lal, Service manager, SBI, Railway Road Jalandhar, PW24 A.N. Gupta, PW25 Amrik Singh, Senior Manager, Punjab and Sind Bank, Gurdaspur, PW26 Kulwant Singh, Officer, Punjab and Sind Bank Fatehgarh Sahib, Shamsher Singh, Chief Manager, Indian Bank Jalandhar, PW27 Baljinder Singh, Manager Punjab and Sind Bank Nabha, PW28 Kesar Singh, PW29 Arun Kumar and PW30 Gurmail Singh, Clerk, State Bank of India, Mandi Gobindgarh were formal in nature. Balwinder Singh Bhandal, Deputy Director Document, FSL, Punjab, Chandigarh was examined as PW31. His testimony reads as under:-

> *"On 8.3.91. I was posted as Assistant Director Document FSL Chandigarh. The disputed and sample documents related to FIR No.96/90 U/S 420/409/467/468/120-B of IPC P.S. Gobindgarh was produced by ASI Malkit Singh before me, which were examined by me in my office and my report DOC 24/91 FSL Punjab 21.6.91 was prepared and the same contains*

7 pages and each page bears my signature and my report is Ex.PW31/A. The said report be read as part of my statement. The disputed signature and writing were marked in my office Q1 to Q113 and each paper bears my signature and stamp of office. Similarly, sample of signature and writing were marked as S1 to S641 upon which bears my signature and stamp of office. The documents regarding Specimen signature and writing are Ex.PW31/1 to Ex.PW31/13-A, Ex.PW31/14 to Ex.PW16, Ex.PW31/16-A, PW31/17, PW31/17-A, PW18/A, Ex.PW31/34, PW31/34-A, PW31/35 to Ex.PW31/80 and the same bears my signature and stamp. Ex.PW31/81 to Ex.PW31/118 are the disputed signatures and writing, which is on the bank drafts and the same bears my signature and stamp of office".

In his cross-examination, he stated that the documents were received in a sealed parcel and memo dated 04.03.1991 issued by SSP Patiala was there with the documents. He did not know where the documents were lying prior to 04.03.1991. All the documents were attested by Executive Magistrate, Amloh, which were dated 14.02.1991. The signatures of Executive Magistrate were there, but the name of the Court was not mentioned. There was a space on each page for signatures, but there were no signatures. PW32 Yashpal Sharma, Clerk, Punjab and Sind Bank, Mandi Gobindgarh apepared as PW32 and his testimony was also formal in nature. Inspector Malkit Singh appeared as PW33, who had arrested the accused in the present case and had recorded the disclosure statements of the accused. He had moved an application Ex.P33/F for taking the writing of the accused, sample on writing and signature of accused before SDM and the same was marked to Naib Tehsildar, Amloh. He conducted the part of investigation. On 14.02.1991, Naib Tehsildar, took the handwriting as per the cheque and draft of the accused Tarlok Singh and Jang Singh in his presence and was handed over to him after putting the seal on the same. On 25.02.1991, the handwriting of Ashwani Kumar accused was taken again before the Naib Tehsildar. During the investigation, he recorded the statements of witnesses and arrested the accused. After completion of the investigation, he prepared the challan and presented the same in the Court on 20.03.1991. In cross-examination, he stated when the signatures of Tarlok Singh and Ashwani Kumar were taken, then the officer of the Court of Amloh was not on leave. He stated that the application was moved before the Court at Amloh who raised question upon the same with regard to the provision, under which, the permission was to be granted to get the signatures of the accused. Thereafter, he moved an application for the same purpose before the SDM, Nabha, who appointed the Naib Tehsildar for getting the signatures of accused. He never got the signatures of Tarlok Singh and Ashwani Kumar.

5. After the conclusion of the prosecution evidence, the entire prosecution case was put to all the accused in the shape of the statement under Section 313 Cr.P.C. and the respondent/accused had

denied the evidence and stated that they had been falsely involved in the present case.

6. In support of their defence, the respondent examined Resham Lal, Assistant Manager, Indian Bank, Ludhiana as DW1, who produced the original letter dated 24.09.1990, which was sent by SHO to Branch Manager, Indian Bank, Mandi Gobindgarh Branch, Ludhiana, directing the bank officials to freeze Account No. 2668 of Ram pal and Account No. 5786 of Manoj Walia and the bank officials had not allowed the operation of the account till day.

7. Learned counsel for the appellant vehemently argued that the impugned judgment is based on misappreciation of evidence and settled law. The trial Court wrongly observed that there was delay in recording the statements of the witnesses and it was unsafe to rely upon such testimonies. In fact, such lapse on the part of the Investigating Agency could not have been used to extend the benefit to the accused. Still further, there was sufficient oral as well as documentary evidence in the shape of testimonies of bank officials, who had clearly proved that the handwriting and the signatures on the drafts were forged and fabricated. Still further, the provisions of Section 73 of the Evidence Act were misinterpreted by the trial Court and the impugned judgment is legally unsustainable.

8. We have heard learned counsel for the parties and perused the trial Court record carefully.

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*** *-*
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> *"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 reappreciation, 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 reappreciation 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. Still further in **Criminal Appeal No(s.) 410-411/2015 [Ravi Sharma Vs State (Government of N.C.T. of Delhi) and another]**, decided on 11.07.2022, Hon'ble the Supreme Court has held as under:-

> *"Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.') while deciding an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant portion of a recent judgment of this Court in* ***Jafarudheen and Others v. State of Kerala (2022 SCC Online SC 495)*** *as follows:*
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> *"25. 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.”

11. In the present case, the prosecution was launched on the basis of the statement made by PW1 Suresh Malhotra. From a perusal of his testimony, it is evident that every attempt had been made to screen real offenders in the present case. PW1 Suresh Kumar admitted that two culprits had been nominated by Punjab and Sind Bank, Mandi Gobindgarh Branch, however, from a perusal of the investigation as well as evidence led by the prosecution, it is apparent that the said bank officials had not been arrayed as accused in the present case. Apart from that, it was also found that on 04.06.1990 Account No. 2022 was opened by Raj Kumar Gupta in the name of Shivam Trading Company. Raj Kumar Gupta furnished his specimen signatures and Parminder Singh had introduced him. However, no action was taken against Raj Kumar Gupta and Parminder Singh. Still further, in the present case, there was sufficient evidence to indicate that two parcels bearing Nos. 2421 and 2422 were received in May 1990. Even 19 drafts, instead of 20 drafts were found. However, the matter regarding loss of drafts was never reported. Even, PW20 S.K. Kapoor, Deputy Manager, Civil Lines, Ludhiana never informed the head office regarding his loss of one bank draft. Apart from that, all the bank managers stated that the bank drafts in dispute did not bear the signatures of the managers, who were posted at Parwanoo, Kapurthala and Gagret, whereas, they had not stated so in their

statements recorded by the police and by making a considerable improvement, the prosecution tried to set up a case against the respondents. Still further, from the evidence led by the prosecution, it was apparent that not only the investigation was tainted, but the prosecution just chose not to produce the investigating officers, who remained closely associated with the investigation in the present case and this fact alone had caused serious prejudice to the case of the defence. In the present case, Inspector Rachhpal Singh, ASI Sukhdev Singh and SI Malkiat Singh had conducted the investigation and the prosecution was under a legal obligation to examine all the witnesses, so that they could be subjected to cross-examination by the accused, just to test the genuineness of the investigation against them. However, the prosecution only examined SI Malkiat Singh and ASI Sukhdev Singh and Inspector Rachhpal Singh did not appear in the witness box in the present case and the accused were deprived of their valuable right to cross-examine such material witnesses of the prosecution.

12. Still further, much stress has been laid on the expert report against the accused, whereby, it has been held that the signatures on the bank drafts were forged and fabricated. In fact, we agree with the findings recorded by the trial Court that such expert evidence could not be have been relied upon in view of the law laid down by the Hon'ble Supreme Court in the matter of ***Sukhwinder Singh and others Vs. State of Punjab, 1994 CAR 224 (SC)***. In the

present case, it is apparent from the testimony of PW33 Inspector Malkiat Singh that he had moved an application Ex.PW33/F for taking the writing of the accused, sample of writing and signatures of the accused before the SDM and the same was marked to Naib Tehsildar, Amloh. On 14.02.1991 and 25.02.1991, the samples of hand writing were taken in the presence of Naib Tehsildar, Amloh and on the basis of that, an expert report was prepared. In the present case, admittedly, neither the SDM nor Naib Tehsildar Amloh were neither conducting inquiry into the case nor the trial of the case was fixed before them. The specimen writing obtained with the directions of the SDM, therefore, were not meant to assist the "Court to form its opinion" as envisaged by Section 73 of the Evidence Act. The specimen writing, under the circumstances, could not be used against the respondents in this case and this major lacuna affects the relevancy of evidence of the expert witness in the present case. Still further, in the present case, the trial Court was correct in observing that the main witnesses, who were bank officials and were easily available, their statements were recorded after a long and unexplained delay in the present case. No doubt, there was no power in recording the statements after several months, but this circumstance also raises a question mark with regard to the genuineness of the statements made by such witnesses and makes the prosecution case doubtful. In fact, the material witnesses were bank officials and the statements should have been recorded with promptitude. Apart from that, in the present case, Jang Singh and Jora Singh were declared “approvers”. However, they were not examined purposely before the trial Court and a serious prejudice has been caused to the case of the respondents. Even otherwise, we have gone through the findings recorded by the trial Court and the impugned judgment does not suffer from any material irregularity, illegality or perversity and the judgment dated 09.10.2002 passed by the Sub-Divisional Judicial Magistrate, Amloh, is ordered to be upheld. The appeal is accordingly dismissed.

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

17. Trial Court record be sent back to the trial Court.

(GURVINDER SINGH GILL)
JUDGE

(N.S.SHEKHAWAT)
JUDGE

24.05.2024
amit rana

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