

2024:PHHC:113153



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

218

CRA AS-163-2016
Date of Decision:02.08.2024

State of Punjab		...Appellant
	Versus	
Raman Kumar and another		... Respondents

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

Present : Mr. M.S. Bajwa, DAG, Punjab.

Mr. Rhythem Bajaj, Advocate for
Mr. S.P.S. Sidhu, Advocate, for the respondents.

N.S.SHEKHAWAT, J. (Oral)

1. The appellant has filed the present appeal against the impugned judgment dated 16.05.2013 passed by the Court of Additional Sessions Judge, Jalandhar, whereby, the respondents have been acquitted of the charge under Section 406 IPC.
2. The FIR in the present case was registered on the basis of a complaint moved by District Manager, Punjab State Cooperative and Marketing Federation Limited, Jalandhar, (hereinafter to be referred as '**the Federation**'). As per the FIR, the Federation had supplied 44995 bags of 50 Kgs packing of paddy (Grade-I) through

Markfed to M/s Shree Ganesh Ji Traders on different dates in the month of October and November, 2001 vide agreement (Annexure-A) and the shelling was to be done as per the miller order issued by the District Controller, Food and Supplies and Consumer Affairs, Jalandhar. The paddy was sent on trucks and the authorized representative of the mill had duly received it. As per clause 8 of the agreement, M/s Shri Ganesh Ji Traders, was to sell the paddy and was to return the rice to Food Corporation of India in the account of Markfed upto 30.06.2002. However, M/s Shri Ganesh Ji Traders only returned the rice of 29154 bags of paddy to the FCI in Markfed account, however, 15841 paddy bags of 50 Kgs bags were misappropriated by M/s Shri Ganesh Ji Traders and, thus, committed the criminal breach of trust. The total price of the misappropriated paddy bags was Rs.77,45,892.58/- and the cost of Bardana was Rs. 3,70,045.76/-. Thus, the respondents had committed the offence of criminal breach of trust to cheat the Markfed to the tune of Rs. 81,50,938.34/- in pre-planned conspiracy.

3. Learned State counsel has vehemently argued that the Court of Additional Sessions Judge, Jalandhar, wrongly acquitted the respondents. In fact, the Federation had already handed over 44995 bags of 50 Kgs packing of paddy to the firm of the respondents, i.e., M/s Shri Ganesh Ji Traders, Phillaur, on different dates and the said paddy was duly received by the respondents for shelling. However, the respondents had misappropriated the paddy bags and caused loss

to the tune of Rs.8,81,50,938.34/-. Learned State counsel further submits that in the present case, there was enough documentary evidence to prove the entrustment to the respondents and the ingredients of the offences were fulfilled. He further contends that even the prosecution had examined PW1 Sadhu Singh Jaswal, District Manager, PW2 Parshotam Lal, PW3 Ram Niwas, Chowkidar and PW4 Amarjit Singh, clerk, who had proved the entrustment of paddy to the respondents and misappropriation of the paddy by the accused.

4. On the other hand, learned counsel for the respondents has vehemently opposed the submissions made by learned counsel for the appellant and submitted that in the present case, there was no report, which could show any misappropriation of paddy by the respondents.

5. I have heard learned counsel for the parties and perused the record carefully.

6. While discussing the scope of interference by the Appellate Court, while dealing with the judgment of acquittal, the Hon'ble Supreme Court held in the matter of **Bhaskar Rao and others Vs. State of Maharashtra AIR 2018 SC 2222:2018 (5) RCR (Criminal 288)** 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. Vs. 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 PW-2 and PW-6 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 re-appreciation, 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 re-appreciation 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 characterised 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."

7. In **Ramesh Babulal Doshi v. State of Gujarat, 1997(3)**

RCR (Criminal) 62: 1996 CrilJ 2867, this Court observed as under:

"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."

8. In the present case, the main charge against the respondents was with regard to the misappropriation of paddy bags and consequently commission of the offence of breach of trust. However, the appellate Court had rightly held that in the present case, there was no audit report on the file, which could prove the misappropriation of paddy by the respondents. Admittedly, an official of the appellant/Federation also remained at the site, however, he

never submitted a report/complaint with regard to the shortage of paddy at the site. Thus, in the absence of this documentary evidence, it is difficult to conclude that the respondents had misappropriated any paddy in the present case. Apart from that, the agreement Ex.R-1, which was admittedly executed between the appellant and the respondents clearly proved that the appellant as well as respondents were responsible for the safe custody of the paddy and delivery of the rice. Thus, as per the admitted facts of the appellant, the paddy was in the joint custody of the Government and the millers till its milling is completed and the rice is delivered to the Food Corporation of India. Even, PW1 Sadhu Singh Jaswal admitted that normally the staff of local branch was employed and remained there for 24 hours and in case of need, the security guard could also be arranged. Even, the prosecution witnesses themselves admitted the stock remained in the joint custody of the appellant as well as respondents and it was regularly supervised by the senior officers. Thus, when the paddy remained in the joint possession of the appellant as well as respondents, there was no question of exclusive custody of the appellant and its consequent misappropriation by them. Thus, the findings recorded by the appellate court/Additional Sessions Judge, Jalandhar are based on correct appreciation of facts and evidence and this Court finds no reason to interfere with the same.

9. As a consequence, the impugned judgment dated 16.05.2013 passed by the Court of Additional Sessions Judge, Jalandhar, is upheld and affirmed.
10. Findings no merits, the present appeal is ordered to be dismissed.

02.08.2024	(N.S.SHEKHAWAT)
amit rana	JUDGE
Whether reasoned/speaking	: Yes/No
Whether reportable	: Yes/No