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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-A-1638-M.A. of 2018
Date of decision: 30.07.2024
Reserved on: 01.07.2024

Sudhan Singh ... Applicant

Vs.

Jitender Kumar and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. R.K. Saini, Advocate,
for the applicant.

Mr. R.S. Pathania, Advocate,
for Mr. Sunil Saharan, Advocate,
for respondent No.1.

Ms. Nidhi Garg, AAG, Haryana,
for respondent No.2.

MANISHA BATRA, J.

1. The instant application under Section 378 (4) of Code of Criminal Procedure has been filed by the applicant-complainant seeking grant of leave to file appeal against the judgment dated 06.03.2018 passed by the Court of learned Judicial Magistrate Ist Class, Hisar in Criminal Complaint No.131 of 2013 titled as *Sudhan Singh v. Jitender Kumar and others* filed under Sections 323, 325 and 506 of IPC whereby, the complaint had been dismissed and the respondent No.1-

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accused-Jitender Kumar was acquitted of the charges as framed against him.

2. Brief facts of the case relevant for the purpose of disposal of the present application are that the aforementioned complaint was filed by the applicant on the allegations that on 08.07.2013 at about 6:30 PM, he was going towards his house, when the accused Jitender along with three more persons namely Dharamender, Ravinder and Manoj intercepted him on the way. All of them proclaimed in one tone that they would teach him a lesson for having a verbal altercation with Jitender on the previous day and then while hurling abuses to him, they opened an assault thereby giving him kicks and fist blows due to which three of his teeth were broken and he sustained injuries on his eyes and nose. Rescue alarm raised by him attracted his sons Pardeep and Ravinder who rushed towards the spot. The applicant had become unconscious and was rushed to hospital. He remained admitted therein for two days. His statement was recorded by the police on 10.07.2013. However, no action was taken by the police against the accused, rather the accused got an FIR No.697 dated 08.07.2013 registered against him at Police Station Sadar, District Hisar under Sections 323, 324 and 506 read with Section 34 of IPC on false allegations.

3. In preliminary evidence, the applicant-complainant examined five witnesses including himself. Vide order dated 24.08.2017, the

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accused Jitender i.e. the present respondent No.1 was ordered to be summoned as such to face trial for commission of offences punishable under Sections 323, 325 and 506 of IPC. However, the prayer made by the applicant for summoning the above named three persons as accused as well as summoning them under Sections 147, 148, 324 and 326 of IPC had been declined.

4. The respondent No.1 caused appearance in response to the summons and was admitted to bail. In pre charge evidence, the applicant examined CW-1 Dr. Kuldeep Chaudhary, CW-2 Constable Gulab Singh, CW-3 Dr. Tarun Sapra, CW-5 Ravinder, CW-6 Pardeep and himself appeared as CW-4. On finding a prima facie case for commission of offences punishable under Sections 323, 325 and 506 of IPC, the respondent No.1 was chargesheeted accordingly, vide order dated 19.01.2018. He pleaded not guilty to the charges and claimed trial.

5. Opportunity was granted to the respondent No.1 to cross-examine witnesses of the applicant in after charge evidence. However, he did not choose to do so. Statement of accused was recorded under Section 313 of Cr.P.C. He abjured his guilt and claimed himself to be innocent. However, no defence evidence had been adduced.

6. After hearing the arguments advanced by both the sides and appraising the evidence produced on record, the learned Magistrate observed that the applicant had failed to bring home the guilt of the

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respondent No.1 beyond doubt and, therefore, dismissed the complaint and acquitted the respondent No.1.

7. Feeling aggrieved, the present application has been filed.

8. It is argued by learned counsel for the applicant-complainant that the impugned judgment is liable to be set aside as the findings as given by learned trial Court are not sustainable in the eyes of law, the same being based on conjectures and surmises. The learned trial Magistrate did not apply her judicial mind and did not appraise the evidence produced on record in a proper perspective. There was sufficient, cogent and convincing evidence on record to prove that the applicant had sustained simple as well as grievous injuries as on 08.07.2013 and that those injuries were voluntarily caused by the respondent No.1 and he was criminally intimidated by him. The statements of eye-witnesses examined by him coupled with the medical evidence produced on record in the form of testimonies of CW-1 Dr. Kuldeep Chaudhary and CW-3 Dr. Tarun Sapra were sufficient to prove the allegations in the complaint. With these broad submissions, it is argued that the impugned order is liable to be set aside, the application deserves to be allowed and he deserves to be granted leave to file appeal.

9. Per contra, it is argued by learned counsel for respondent No.1 that there is no illegality or infirmity in the impugned order and the same is well reasoned. The learned trial Court had passed a detailed order

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taking into consideration the nature of the evidence produced on record and no ground whatsoever has been made out for interfering with the same. Therefore, it is urged that the application is devoid of any merits and is liable to be dismissed.

10. I have heard learned counsel for the applicant-complainant and learned counsel for respondent No.1 at considerable length besides perusing the material placed on record.

11. Since the applicant has sought leave to file appeal against the judgment of acquittal, therefore, before proceeding further and considering the arguments raised by learned counsel for the parties, it would be useful to review the approach to be adopted in such like matters. In **Chandrappa and others v. State of Karnataka**, (2007) 4 SCC 415, the Hon'ble Apex Court had observed that it could not be forgotten that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent Court of Law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court. In **Atley v. State of U.P.**, AIR 1955 SC 807, the approach of the Appellate Court while considering a judgment of acquittal was discussed and it was

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observed that unless the Appellate Court comes to the conclusion that the judgment of acquittal was perverse, it should not set aside the same. In **Aher Raja Khima v. State of Saurashtra**, AIR 1956 SC 217, it was observed that for the High Court to take a different view on the evidence “there must also be substantial and compelling reasons for holding that the trial Court was wrong”. In **Ramesh Babulal Doshi v. State of Gujarat**, 1996 SCC (CrL.) 972, the Hon'ble Apex Court while speaking about the approach of the Appellate Court while considering an appeal against the order of acquittal of accused observed that while speaking in judgment over acquittal, the First Appellate Court is required to seek an answer to the question whether the findings of the trial Court are culpably wrong, manifestly erroneous and demonstrably unsustainable. If the Appellate Court, answers the above questions in the negative, the order of acquittal should not be disturbed. In **Chandrappa's case** (Supra), the Apex Court after referring to a catena of judgments, culled out the following general principles regarding the powers of the Appellate Court while dealing with an appeal against an order of acquittal in the following words:-

- i) An Appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
- ii) The Code of Criminal Procedure puts no limitation,

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restriction or condition on exercise of such power and Appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and law.

iii) An Appellate Court, must bear in mind that in case of acquittal, there is double presumption in favour of the accused.

iv) If two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial Court.

12. On applying the proposition of law as laid down in the above cited authorities to the peculiar facts and circumstances of the present case and on going through the material placed on record of the learned trial Court, I am of the considered opinion that so far as the fact that the applicant had sustained injuries on 08.07.2013 is concerned, the same stands proved from the testimony of CW-1 Kuldeep Chaudhary who had conducted medico legal examination of the applicant as on 08.07.2013 as well as the testimony of CW-3 Dr. Tarun Sapra, Medical Officer Sapra Hospital, Hisar. CW-1 deposed that on conducting medical examination of the applicant one abrasion on left side of posterior aspect of parietal region of scalp, swelling with tenderness on occipital region of scalp and swelling with tenderness on left side of upper lip had been found. His upper incisor teeth and left side lower incisor were missing. He also

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admitted during cross-examination that smell of alcohol was coming from the mouth of the applicant. CW-3 Dr. Tarun Sapra had also deposed that the victim was admitted in his hospital on the night of 08.07.2013. He sustained superficial injuries and was discharged in satisfactory condition. He proved admission record Ex.PW3/A and CT Scan report Ex.PW3/D. Both these witnesses stated that the possibility of the injuries found on the person of the applicant by falling on hard surface could not be ruled out. CW-1 even stated that such injuries could be sustained due to fall under influence of alcohol. From the statements of both these witnesses, it is crystal clear that only some superficial injuries had been sustained by the applicant as on 08.07.2013. No medical evidence in the form of X-Ray report or evidence of any Radiologist had been produced on record by the applicant to show that he had sustained any grievous injury on the person or his teeth were broken shortly before conducting medical examination of the applicant. Therefore, at the most, it could be stated that the applicant had sustained simple injuries on 08.07.2013.

13. Now the next question that arises for consideration is as to whether these injuries were proved to have been voluntarily caused by the respondent No.1 to the applicant. The case of the applicant-complainant on this point rested on the testimonies of PW-5 Ravinder and PW-6 Pardeep both sons of the applicant and the applicant himself i.e. CW-4. Before discussing their statements, it is important to point out

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that though in the complaint filed by him, it was alleged that the respondent No.1 along with three more persons namely Dharamender, Ravinder and Manoj had assaulted the applicant-complainant but, even process was not issued by the trial Court against the above named three persons and complaint qua them was ordered to be dismissed. The applicant never challenged the order dated 24.08.2017 whereby the learned trial Magistrate had chosen not to issue process against the above named Dharamender, Ravinder and Manoj. Meaning thereby the applicant was not aggrieved from the fact that above named three persons were not summoned as accused by the learned trial Court. However, strangely and interestingly while stepping into the witness box, the applicant reiterated the same stand as taken in his complaint by saying that the respondent No.1 along with the above named Dharamender etc. had intercepted him and all of them had kicked and given fist blows to him. At no stage of trial, any application for summoning the above named Dharamender etc. as additional accused had been filed. Once, the applicant had not chosen to challenge the order of the trial Magistrate qua dismissal of the complaint qua Dharamender etc then, his statement by including them as the persons who had assaulted him, can certainly not be relied upon beyond doubt.

14. Further, the applicant did not attribute any specific injury to the respondent No.1 and simply stated that the respondent No.1 as well as

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Dharamender etc. had assaulted him. He stated that three of his teeth were broken. However, no medical evidence has come on record to this effect. Then, the statements of the applicant and his sons are inconsistent with regard to the manner of his being taken to hospital. The applicant stated that after the incident, his sons had taken him to General Hospital in an ambulance wherein he was medically examined and then he was shifted to Sapra Hospital. During cross-examination, he admitted that the Primary Health Centre was at a distance of 400 meters from his house but since it was lying closed and he had sustained many injuries, therefore, he was not got admitted there and was straightaway taken to hospital. His testimony to this effect had been falsified by the statement of CW-5 Ravinder who deposed that the Primary Health Centre was open at the time of occurrence and after getting first aid from there, his father was being taken to hospital whereas PW-6 Pardeep stated that his father had become unconscious. They had gone to Primary Health Centre and as no doctor was present there, they did not get any medical first aid and had gone to General Hospital, Hisar. These inconsistencies create a doubt about the factum of CW-5 and CW-6 having eyewitnessed the occurrence and about taking the victim to hospital immediately thereafter.

15. Then it is proved from the medical evidence as well as from the admission of the applicant himself that at the time of conducting his medical examination, he was in an inebriated state. The defence version

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was that he had struck a blow with bottle on the head of Jitender Kumar and had bitten him and himself sustained injuries due to fall being under the influence of liquor though this plea was denied by him. Since there is nothing on record to show that the police was intimidated by him at any point of time and his statement had been recorded or that FIR was not registered on his complaint, therefore, the statements of the complainant and his sons who are obviously interested witnesses cannot be relied upon beyond doubt. It has also come on record that a case was got registered against the applicant on the basis of complaint lodged by the respondent No.1 on 08.07.2013 itself and since there is nothing on record to prove that he had lodged any complaint before the police on 10.07.2013 but no action had been taken on the same against the respondent and it is revealed from the record that the complaint had been filed by him only on 30.07.2013, therefore, his plea to this effect cannot be considered to be reliable and rather it appears that he filed complaint as a counter blast to the FIR lodged by the respondent.

16. Taking these circumstances into consideration, this Court is of the opinion that the learned trial Court had properly appreciated the evidence produced on record and committed no error in acquitting the respondent. On reading of entire material, this Court finds that there is no perversity in the findings recorded by learned trial Court and there is no compelling reason to interfere with its judgment. Accordingly, it is held

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that no ground has been made out to grant leave to appeal to the applicant. Finding no merit in the application, the same is dismissed.

30.07.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No