



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM-A-1134-MA-2015 (O&M)
DECIDED ON: 21.10.2024**

STATE OF PUNJAB

....APPLICANT/APPELLANT

VERSUS

RAVI KANT & ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present : Mr. Jaspal Singh Guru, AAG, Punjab.

Ms. Suman Kumari, Advocate,
for the respondents.

SANDEEP MOUDGIL J (ORAL)

1. The present applications for leave to appeal have been filed against the judgment dated 12.01.2015 passed by learned Additional Sessions Judge-V, Ferozepur, whereby the respondents were acquitted by allowing the appeal filed by them against the judgment of conviction and order of sentence dated 29.03.2012 rendered by the learned trial Court, in FIR No.128 dated 08.11.1999, registered under Sections 406 IPC at Police Station Guruhar Sahai, District Ferozepur.

2. Succinctly, the facts leading to the dispute involved in the present case are that the complainant-PUNSUP delivered paddy for custom milling to the accused-respondents, regarding which an agreement was entered into by the parties. Partial delivery of the rice was made but due to a shortage found when the physical verification was conducted, loss had been caused and, therefore, the rice



could not be supplied to the FCI, thus, violation of terms of agreement was alleged, instant FIR was registered under Section 406 IPC.

3. After investigation the final report under Section 173 CrPC was presented before the Court, however, the charge was framed under Section 406 IPC, to which the accused- respondents pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case, examined as many as six witnesses. After closure of the prosecution evidence, in the statement recorded under Section 313 Cr.P.C., the accused-respondents denied all the incriminating circumstances appearing against him in the prosecution case and pleaded innocence.

5. The trial Court convicted the accused-respondents. They being aggrieved, assailed the same by filing an appeal before the Additional Sessions Judge, Ferozepur, which was subsequently allowed and the judgment of the trial Court was set aside, thereby, granting acquittal to them.

6. The State has filed the present application seeking leave to appeal.

7. The pith and substance of the submissions of advanced by the learned State counsel are that the judgment of the trial Court was well reasoned having been based on evidence on record, which has subsequently been wrongly reversed by the lower appellate Court. Once there was documentary evidence and the physical verification reports, whereby it was revealed that 768.95 quintals of paddy had been misappropriated, the conviction of accused-respondents, was required to be maintained. The testimonies of the witnesses regarding the entrustment and the failure of accused-respondents to deliver the rice were consistent and were also supported by the documentary evidence. The ingredients of Section 406 IPC were proved, there being sufficient evidence on record.



8. The learned counsel for the respondents contended that the lower appellate Court has rightly found that there was no evidence whereby the ingredients of Section 405 IPC, to invite the offence under Section 406 IPC, could be proved and the dispute was purely civil in nature, arising out of the terms and conditions of agreement Ex.P-1, therefore, reversed the judgment of the trial Court.

9. Heard learned counsel for the parties and perused the record.

10. In **Khedu Mohton vs. State of Bihar**, (1970) 2 SCC 450, Hon'ble The Supreme Court held that, "It is true that the powers of the High Court in considering the evidence on record in appeals under Section 417, Cr.P.C. (1898) are as extensive as its powers in appeals against convictions but that court at the same time should bear in mind the presumption of innocence of accused persons which presumption is not weakened by their acquittal. It must also bear in mind the fact that the appellate judge had found them not guilty. Unless the conclusions reached by him are palpably wrong or based on erroneous view of the law or that his decision is likely to result in grave injustice, the High Court should be reluctant to interfere with his conclusions. If two reasonable conclusions can be reached on the basis of the evidence on record then the view in support of the acquittal of the accused should be preferred. The fact that the High Court is inclined to take a different view of the evidence on record is not sufficient to interfere with the order of acquittal."

11. It is pertinent to note that the accused-respondents had produced the copies of the judgments whereby on similar allegations, the Millers were acquitted of the criminal liability as well as the copy of arbitration award in the present case, besides other documents, to rebut the prosecution version and demonstrate that a



criminal cloak, has been given to a dispute, which was of civil nature. A finding rightly came to be recorded that the ingredients of Section 406 IPC with regard to the entrustment of paddy were not fulfilled, as exclusive of the stock was of the Firm, which was not arraigned as an accused. Further that the accused-respondents stated to be a partner of the said Firm. There is nothing that has been brought out to dispel the reasoning of the lower appellate Court that the case involves a breach of contract and *mens rea* to commit the offence was lacking as well, a major part of the contract having been concluded. There is no substantial question of law raised on behalf of the appellant. Where the judgment of acquittal is recorded, two important aspects emerge therefrom, before the appellate Court. Firstly, there is presumption of innocence of the accused person in the criminal jurisprudence and secondly, the concerned court has recorded the finding in favour of the accused and disbelieved the prosecution and has illustrated as a matter of fact that the prosecution has failed to prove its case beyond a reasonable doubt, thus assuring the benefit to the accused. Both these presumptions-jurisprudential and with regard to the factual matrix must be kept in mind for consideration and unless the conclusions reached by the Court were palpably erroneous or contrary to law or it is likely to result in injustice. The High Court may be reluctant in interfering with the judgment of acquittal. [See **Satyavir Singh vs. State of U.P.**, (2010) 3 SCC 174]

12. It is trite that the power of High Court to reverse the acquittal to conviction must be used sparingly and wherever a possible view is taken by the Court below, the same cannot be obstructed the acquittal further bolsters the presumption that the accused is innocent. The Courts in their appellate power cannot supplant over the view of the trial Court, as long as the same is reasonably



founded.

13. In light of the afore-mentioned discussion, this Court concurs with the judgment passed by the lower appellate Court. Finding no merit, the prayer for grant of leave to appeal is hereby declined.

14. Pending criminal misc. application, if any also disposed off.

(SANDEEP MOUDGIL)
JUDGE

21.10.2024
sham

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