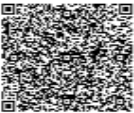


2024:PHHC:109459



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

227

CRM-A-305-MA of 2018
Date of Decision: 31.07.2024

Jagjeet Singh ...Applicant
Versus
Inderjit Singh and another ... Respondents

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

Present : Mr. Gagandeep Grewal, Advocate, for the applicant.

N.S.SHEKHAWAT, J. (Oral)

1. The applicant has filed the present application under Section 378(4) Cr.P.C. with a prayer to grant special leave to appeal against the impugned judgment dated 09.10.2017 passed by the Court of Judicial Magistrate 1st Class, Ludhiana, whereby, the respondents were ordered to be acquitted of the charge.
2. The complaint in the present case was filed by the applicant/complainant by alleging that Inderjit Singh, respondent No. 1 is his brother-in-law. The applicant and his brother Gurpreet Singh had been running a business under the name and style of M/s United Machine Tools Corporation and there was some dispute between them. To resolve the said dispute, the partnership concerned

was wound up and both the brothers had entered into an agreement that property measuring 672 square yards would be sold through accused Inderjit Singh and Jagtar Singh, accused. In fact, the agreement dated 10.05.2006 was executed with the intervention of Inderjit Singh and Jagtar Singh and it was duly signed by Inderjit Singh, respondent. The applicant handed over a sum of Rs. 6.76 lacs to Inderjit Singh, respondent at the time of the settlement of account and out of the said amount, Rs. 6.27 lacs was to remain with the accused only, after due deductions. After the said amount, an amount of Rs. 1.50 lacs was also deducted by the accused without permission for passing of the goodwill of the firm. As such, Rs. 1.25 lacs was further given to Inderjit Singh and out of the said amount, a sum of Rs. 85,000/- was to be paid to M/s G.K. Industries and Rs. 40,000/- to M/s Birla Textiles Mills. Consequently, it was apparent that the complainant had to pay an additional amount, the liability of which was only upon the accused and the applicant was cheated.

3. Still further, it was also stated that Satwant Kaur, respondent No. 2/wife of respondent No. 1 also got registered a false case against the applicant in Police Division No. 6, Ludhiana. She had also connived with the respondent No. 1 and they were jointly responsible for the commission of the offence of cheating with the applicant as well as for criminal misappropriation of the amount, wrongful restraint and criminal intimidation.

4. After the conclusion of the preliminary evidence, the respondent/accused were summoned for committing the offence punishable under Sections 406, 420, 506 and 34 of IPC.

5. During the pre-charge evidence, the prosecution examined complainant Jagjeet Singh as CW1, Paramjit Singh as CW2, Kirpal Singh as CW3, Amarjot Singh as CW4 and Ashok Kumar as CW5 and tendered into evidence documents the following documents:-

(i) Photocopy of agreement dated 10.05.2006 as Ex.C1.

(ii) Endorsement as Ex.CI/A

(iii) Photocopy of agreement dated 07.03.2006 & its certified copy as Ex.C2 & Ex.C2/1.

(iv) Original details of payment as Ex.C3.

(v) Attested copy of order dated 14.05.2011 as Ex.CX.

(vi) Attested copy of statement dated 14.05.2011 as Ex.CY.

(vii) Agreement as Ex.C5.

(viii) Endorsement as Ex.C5/1 and certified copy of compromise as Ex.C6.

Thereafter, pre-charge evidence was closed.

6. After taking into account the pre-charge evidence, the respondent/accused were charge sheeted under Sections 406 and 420 IPC, to which, they pleaded not guilty and claimed trial. During the post-charge evidence, Jagjeet Singh appeared as CW1 and examined Ashok Kumar as CW5 for their further cross-examination.

7. The statement of the accused under Section 313 Cr.P.C. was recorded and they stated that they had not received any amount, as alleged and had been falsely involved. Since, no amount was given to them as per the agreement in question, there was no misappropriation. Even, the agreement itself was *void-ab-initio* being unregistered. As far as Ex.C-5 was concerned, it was not pertaining to them and signatures on the documents were obtained only to reflect their presence. The accused were only asked to resolve their dispute between Jagjeet Singh, applicant and his brother Gurpreet Singh and they had no knowledge about the allegations levelled against them. Rather they alleged that a fraud was committed on them by Jagjeet Singh, applicant and he had made forgery on the Will. They had also lodged FIR against the applicant/complainant regarding fraudulent retention of their share in the property.

8. In defence, the respondent tendered into evidence the documentary evidence, i.e., statement of account as Ex.D1, certified copy of jamabandi for the year 2004-05 as Ex.D2, copy of order dated 16.01.2016 as Ex.D2/A, certified copy of Will as Ex.D4, Agreement as Ex.D5, photocopy of statement as Ex.D6, copy of sale deed as Ex.DR and certified copy of challan as Ex.DC and closed defence evidence.

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

10. Learned counsel for the applicant has vehemently argued that the trial Court had completely misappropriated the evidence and the settled law. In fact, the respondent No. 1 is brother-in-law of the applicant and an agreement dated 10.05.2006 was registered rightly between applicant and his brother Gurpreet Singh with the intervention of the respondent. At the time of the settlement of account, an amount of Rs. 6.76 lacs was entrusted to respondent No. 1 on account of payment to be made to various persons. After deducting this amount, an amount of Rs. 6.27 lacs remained with respondent No. 2. An amount of Rs. 1.50 lacs was also demanded by respondent No. 1 on account of passing of the goodwill of the firm. Another amount of Rs. 1.25 lacs was also entrusted to respondent No. 1 and the same amount was also misappropriated. The applicant repeatedly requested the respondents to return the amount entrusted to them as per the compromise dated 10.05.2006. However, in stead of returning the amount, a false case FIR No. 35 dated 03.03.2007 under Sections 420, 467, 468, 471 and 120-B IPC got registered at Police Station Division No. 6 Ludhiana. Even there was ample evidence before the trial Court to prove the said fact but the respondents were wrongly acquitted by the trial Court.

11. After the meticulous examination of the evidence led by the parties, I have arrived at the conclusion that the present application is meritless. In the present case, the applicant/complainant primarily placed reliance on the agreement dated 10.05.2006 to prove

the factum of payment. The said agreement was exhibited by both the parties as Ex.C1 and Ex.D5. However, from the agreement, it is apparent that the terms of the agreement were dealing with the factum of future payments, which was to be made by the parties to Inderjit Singh, respondent No. 1. There is no recital in the agreement that some payment was made by the applicant to any of the accused in the present case. Still further, since there was no payment made to the accused, there was no question of inducement by the respondent. Thus, there was no evidence with regard to the basic allegations levelled by the applicant against the respondent.

12. Still further, this Court finds sufficient force in the findings recorded by the trial Court that the FIR was got registered by the respondents against the applicant on 03.03.2007 and the present complaint filed by the applicant on 14.11.2007, that too, without any evidence of proof of payment by the applicant to the accused in the instant case. Thus, it is apparent that it is a counter blast measure on the part of the applicant to prosecute the respondent, who had already lodged the FIR against the applicant.

13. 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."

14. 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."

15. Even otherwise, I have carefully perused the impugned judgment passed by the trial Court and found no reasons to overturn the findings recorded by the trial Court. The trial Court has correctly appreciated the evidence of the prosecution and the applicant has

failed to raise any argument, which may impel this Court to set-aside the well reasoned findings recorded by the trial Court. As a consequence, the impugned judgment dated 09.10.2017 passed by the Court of Judicial Magistrate 1st Class, Ludhiana, is upheld and affirmed.

14. Findings no merits, the present application for special leave to appeal is ordered to be dismissed.

31.07.2024

amit rana

(N.S.SHEKHAWAT)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No