

2024:PHHC:043427

**250 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-A-993-MA-2016 (O&M)
Date of Decision: 01.04.2024**

SURINDER SINGH

... Applicant

VS.

DALBIR SINGH AND ANR

.. Respondents.

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Karan Singla, Advocate
for the applicant.

Mr. Anil Kumar Garg, Advocate
for respondent(s).

PANKAJ JAIN, J.(ORAL)

At the outset, learned counsel submits that Dalbir Singh-respondent No.1 has died. The application against him stands abated.

By way of present application, the applicant seeks leave to appeal against the judgment of acquittal passed by the learned JMJC, Ludhiana in complaint case. The complaint was preferred with the allegations that the accused issued cheques in favour of the complainant (applicant herein). However, the cheques issued were dishonoured. Resultantly, the complainant in order to avail the remedy in accordance with law served notice upon the respondents-accused as provided under Section 138 of the Negotiable Instruments Act. Annoyed with the said action of the complainant, the accused persons attacked him and caused injuries. The respondents-accused were summoned to face trial and after investigation, the evidence produced on record. The trial Court came to the conclusion that apart from bald statement made by the complainant, there is no evidence on record to corroborate his version. Apart therefrom, the Court

found that the witnesses examined by the complainant have not aided his case.

As per the complainant, who appeared as CW-1 was present on the spot whereas Sarwan Singh, who appeared as CW-2, was specific in his deposition that he was not present on the spot when the occurrence took place. Apart from that, the trial Court found that even the medical evidence was not worth reliance. Dr. Meera, who examined the complainant, has appeared as CW-3, stated that injuries No.3 to 6 as per the MLR were subject to X-ray. However, the evidence brought on record by the complainant was completely silent with respect to whether the complainant conducted any X-ray on his body regarding the alleged injuries. Thus, finding the evidence totally discrepant and disarrayed by the trial Court, the complainant has miserably failed to prove the guilt of the respondents-accused and they were entitled to benefit of doubt.

Counsel for the applicant has not been able to point out any evidence on record which was not considered by the trial Court. Keeping in view the reasoning recorded by the trial Court, he would not be able to point out any infirmity to hold that view formulated by the trial Court was not possible.

Scope of appeal stands culled out by Supreme Court in the case of *State of Uttar Pradesh vs. Banne @ Baijnath and others, (2009) 4 SCC 271*, wherein the judgment passed in *Chandrappav.State of Karnataka, (2007) 4 SCC 415* has been discussed and the observations made therein have also been reproduced as under:-

“36.....(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation,

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

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is 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 shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) 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.....”

After discussing various judgments, the Supreme Court in *Banne @ Baijnath’s* case (supra) has laid down some principles and held as under:-

“37....1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappraise the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed to be innocent until proved guilty. The accused possessed this presumption when he was before the trial court. The High Court's acquittal bolsters the presumption that he is innocent.

3. There must also be substantial and compelling reasons for reversing an order of acquittal.

This Court would be justified in interfering with the judgment of acquittal of the High Court only when there are very substantial and compelling reasons to discard the High Court's decision.

38. Following are some of the circumstances in which perhaps this Court would be justified in interfering with the judgment of the High Court, but these are illustrative not

exhaustive:

- (i) *The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;*
- (ii) *The High Court's conclusions are contrary to evidence and documents on record;*
- (iii) *The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;*
- (iv) *The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;*
- (v) *This Court must always give proper weight and consideration to the findings of the High Court;*
- (vi) *This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal..... ”*

In view of afore-stated evidence, this Court does not find that

the view taken by Trial Court can be said to be improbable view warranting

interference by this Court under Section 378(4) of the Code.

Dismissed.

Pending application(s), if any, also stands disposed off.

01.04.2024
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(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No