

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

265

CRR-3913-2015
Date of decision : 03.04.2024

Soma Rani Petitioner

versus

Jaswinder Singh Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Ankur Mehta, Advocate for
Mr. A.S. Manaise, Advocate
for the petitioner.

Mr. Sandeep Arora, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

1. Challenge is the order dated 24.09.2015 passed by Additional Sessions Judge, Gurdaspur affirming the judgment of conviction dated 22.08.2014 passed by JMIC, Gurdaspur against the petitioner.
2. Petitioner was summoned to face trial for offence punishable under Section 138 of the Negotiable Instruments Act (in short 'the Act') with respect to dishonouring of cheque of Rs.2 lakhs bearing No.981924 dated 18.03.2013. Both the Courts below after analyzing the evidence on record came to the conclusion that the guilt of the petitioner stands proved and held her guilty of offence punishable under Section 138 of the Act.
3. Counsel for the petitioner while assailing the judgments eloquently argued that the Courts below have wrongly disbelieved the

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defence of the petitioner. The petitioner led evidence to prove that out of loan of Rs.2 lakhs, Rs.1,80,000/- was paid back and only Rs.20,000/- was to be paid. The security cheque issued by the petitioner was misused by the complainant. He submits that two witnesses namely Gurpreet Singh and Ram Pal, MC appeared as DW-1 and DW-2 to prove the said fact, yet the trial Court has completely brushed aside the evidence and held the petitioner guilty.

4. *Per contra*, Mr. Arora submits that a well reasoned judgment has been passed by the trial Court which has been rightly affirmed by the Appellate Court. This Court while sitting in revisional jurisdiction under Section 401 of the Code cannot re-appreciate the evidence on record.

5. I have heard counsel for the parties and have gone through the records of the case.

6. In view of the stand taken by the petitioner, it stands admitted that there was a transaction of Rs.2 lakhs. However, the question is whether the defence raised by the petitioner with respect to repayment of Rs.1,80,000/- can be said to have been proved from the testimony of DW-1 and DW-2. Having seen the testimony of both the witnesses, counsel for the petitioner cannot dispute that none of them is privy to the said transaction.

7. In view thereof, this Court does not find any error committed by the Courts below in disbelieving DW-1 and DW-2 with respect to payment back of Rs.1,80,000/-. So far as the parameters with respect to exercise of jurisdiction under Section 401 of the Code are concerned, the same have been well laid down by Apex Court in the case of

(Now Jharkhand) and another, 2002 AIR (SC) 2907, wherein it has been held that:-

“12. We have carefully considered the material on record and we are satisfied that the High Court was not justified in re-appreciating the evidence on record and coming to a different conclusion in a revision preferred by the informant under Section 401 of the Code of Criminal Procedure. Sub-section (3) of Section 401 in terms provides that nothing in Section 401 shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction. The aforesaid sub-section, which places a limitation on the powers of the revisional court, prohibiting it from converting a finding of acquittal into one of conviction, is itself indicative of the nature and extent of the revisional power conferred by Section 401 of the Code of Criminal Procedure. If the High Court could not convert a finding of acquittal into one of conviction directly, it could not do so indirectly by the method of ordering a re-trial. It is well settled by a catena of decisions of this Court that the High Court will ordinarily not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. The High Court will not be justified in interfering with an order of acquittal merely because the trial court has taken a wrong view of the law or has erred in appreciation of evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of this Court have laid down the parameters of exercise of revisional jurisdiction by the High Court

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under Section 401 of the Code of Criminal Procedure in an appeal against acquittal by a private party. (See AIR 1951 Supreme Court 196 : D. Stephens v. Nosibolla; AIR 1962 Supreme Court 1788 : K.C. Reddy v. State of Andhra Pradesh; (1973) 2 SCC 583 : Akalu Ahir and others v. Ramdeo Ram; AIR 1975 Supreme Court 1854 : Patakalapati Narayana Gajapathi Raju and others v. Bonapalli Peda Appadu and another and AIR 1968 Supreme Court 707 : Mahendra Pratap Singh v. Sarju Singh)."

8. Apex Court in *Thankappan Nadar vs. Gopala Krishnan* (2002) 9 SCC 393, held as under : -

"6. In a revision application filed by the de facto complainant against the acquittal order, the court's jurisdiction under Section 397 read with Section 401 of the Cr.P.C. is limited. The law on the subject is well settled. Instead of referring to various judgments, we would only refer to few decisions rendered by this Court. In Akalu Ahir and Others v. Ramdeo Ram, (1973) 2 SCC 583 this Court has (in SCC pp.587-88, para 8) observed thus:

"This Court however, by way of illustration, indicated the following categories of cases which would justify the High Court in interfering with a finding of acquittal in revision:

- (i) Where the trial court has no jurisdiction to try the case, but has still acquitted the accused;*
- (ii) Where the trial court has wrongly, shut out evidence which the prosecution wished to produce;*
- (iii) Where the appellate court has wrongly held the evidence which was admitted by the trial court to be inadmissible;*
- (iv) Where the material evidence has been overlooked only (either) by the trial court or by the appellate court; and*

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(v) Where the acquittal is based on the compounding of the offence which is invalid under the law.

These categories were, however, merely illustrative and it was clarified that other cases of similar nature can also be properly held to be of exceptional nature where the High Court can justifiably interfere with the order of the acquittal."

The Court further observed: (SCC p.588, para 10)

"No doubt, the appraisal of evidence by the trial judge in the case in hand is not perfect or free from flaw and a court of appeal may well have felt justified in disagreeing with its conclusion, but from this it does not follow that on revision by a private complainant, the High Court is entitled to reappraise the evidence for itself as if it is acting as a court of appeal and then order a retrial. It is unfortunate that a serious offence inspired by rivalry and jealousy in the matter of election to the office of village Mukhia, should go unpunished. But that can scarcely be a valid ground for ignoring or for not strictly following the law as enunciated by this Court.

(Emphasis added)"

9. As a result of the aforesaid, this Court does not find that the view taken by the trial Court can be said to be erroneous.
10. Resultantly, present petition is dismissed.

(PANKAJ JAIN)
JUDGE

03.04.2024
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No