229 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2189-2017
Date of decision: 27.02.2024

DINESH SHUKLA

...PETITIONER

V/S

STATE OF PUNJAB AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present : Mr. Hardik Ahluwalia, Advocate for
Mr. A.S. Manaise, Advocate
for the petitioner.

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Harpreet Singh Brar, J. (Oral)

The present revision petition is preferred against the judgment dated 17.03.2017 passed by learned Additional Sessions Judge, Gurdaspur vide which the judgment of acquittal dated 04.08.2014 passed by learned Judicial Magistrate Ist Class, Gurdaspur in FIR No. 92 dated 20.11.2007 under Section 420, 467, 468, 471, 120-B of the IPC registered at Police Station Purana Shlla, has been upheld.

2. Briefly, the facts are that the petitioner-complainant moved an application dated 06.08.2007 before the SSP, Gurdaspur alleging that respondent no. 2 and other co-accused prepared a false and fabricated General Power of Attoney dated 21.02.1992 by forging the signatures of the petitioner's father (deceased) namely Jagdish Chander Shukla. The accused used the said GPA to execute sale deeds dated 17.03.1992 and 01.07.1992 regarding the property of Jagdish Chander Shukla situated in village Guriya Be Chirag, H.B. No. 626, Tehsil Gurdaspur, which was later inherited by the petitioner and other legal heirs of the deceased.

3. On the basis of material available on record, the learned trial Court acquitted respondent no. 2-accused of the charges framed against him

vide judgment dated 04.08.2014. Aggrieved by the same, the petitioner preferred an appeal before the learned lower Appellate Court, which was dismissed vide judgment dated 17.03.2017.

4. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the said property was sold using the allegedly forged GPA in 1992 while Jagdish Chander Shukla died in 1995. Not only did the petitioner file a complaint regarding the same in the year 2007, after a delay of about 15 years, he also failed to provide any admitted signatures of his father Jagdish Chander Shukla from the year 1991-92 to compare with the signatures on the GPA.

5. Moreover, the four signatures on the disputed GPA were analysed by the handwriting expert from the Forensic Science Laboratory, Punjab, Chandigarh, who then tendered a report dated 21.04.2008. The author of the report- Deputy Director, FSL, concluded that it was not possible to express any definite opinion regarding common authorship of the signatures, suffocating the prosecution case completely. A two Judge Bench of the Hon'ble Supreme Court in **Mir Nagvi Askari Vs. Central Bureau of Investigation (2009) 15 SCC 643**, speaking through Justice S.B. Sinha, has held as under:

> *"166. .....However, since we have already held that the commission of the said offence has not been convincingly established, the accused could not have been convicted for the offence of forgery. The definition of "false document" is a part of the definition of "forgery". Both must be read together. [Vimla (Dr.) v. Delhi Admn. AIR 1963 SC 1572 : 1963 Supp (2) SCR 585]. Accordingly, the accused could not have been tried for offence under Section 467 which deals with forgery of valuable securities, will, etc. or Section 471 i.e. using as genuine a forged document or Section 477-A i.e. falsification of accounts. The conviction of the accused for the said offences is accordingly set aside."*

A two Judge Bench of the Hon'ble Supreme Court in **Sheila Sebastian Vs. R. Jawaharaj and another (2018) 7 SCC 581**, speaking through Justice N.V. Ramana has held as under:-

> *"26. The definition of "false document" is a part of the definition of "forgery". Both must be read together. "Forgery" and "fraud" are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case in hand, there is no finding recorded by the trial court that the respondents have made any false document or part of the document/record to execute mortgage deed under the guise of that "false document". Hence, neither Respondent 1 nor Respondent 2 can be held as makers of the forged documents. It is the imposter who can be said to have made the false document by committing forgery. In such an event the trial court as well as the appellate court misguided themselves by convicting the accused. Therefore, the High Court has rightly acquitted the accused based on the settled legal position and we find no reason to interfere with the same.*
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> *27. A reasonable doubt has already been thoroughly explained in Latesh v. State of Maharashtra [Latesh v. State of Maharashtra, (2018) 3 SCC 66 : (2018) 2 SCC (Cri) 235] wherein "reasonable doubt" has been enunciated by this Court as (at SCC p. 83, para 46) "a mean between excessive caution and excessive indifference to a doubt, further it has been elaborated that reasonable doubt must be a practical one and not an abstract theoretical hypothesis.*
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> *28. In this case at hand, the imposter has not been found or investigated into by the officer concerned. Nothing has been spilled on the relationship between the imposter and Respondent 1. Law is well settled with regard to the fact that however strong the suspicion may be, it cannot take the place of proof. Strong suspicion, coincidence, grave doubt cannot take the place of proof. Always a duty is cast upon the courts to ensure that suspicion does not take place of the legal proof. In this case, the trial court as well as the appellate court got carried away by the fact that accused is the beneficiary or the executant of the mortgage deed, where the prosecution miserably failed to prove the first transaction i.e. PoA as a fraudulent and forged transaction. The standard of proof in a criminal trial is proof beyond reasonable doubt because the right to personal liberty of a citizen can never be taken away by the standard of preponderance of probability."*

6. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. (**See H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa**

and others v. State of Karnataka, (2007) 4 SCC 415). A Division bench of this Court in the judgment passed in **State of Haryana Vs. Ankit and others** passed CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

7. In view of the facts and circumstances of the case, this Court finds that learned counsel for the petitioner has failed to point out any perversity or illegality in findings recorded by the learned lower Appellate Court or the learned trial Court which warrants interference by this Court. Therefore, the present petition is dismissed.

8. Pending miscellaneous application(s), if any, also stand disposed of.

(HARPREET SINGH BRAR)
February 27, 2024 **JUDGE**
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(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No