

2024:PHHC:028931-DB

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

CRM-A-1434-2023 (O&M)
Date of decision: 22.02.2024

Dashrath

....Applicant

Versus

State Of Haryana & Ors.

....Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**

Present: Mr. Tejas Bansal, Advocate for Mr. Sanjiv Kumar
Aggarwal, Advocate for the applicant.

Mr. Manish Dadwal, AAG, Haryana for respondent
No.1-State.

SUDHIR SINGH,J.

The instant application seeking leave to appeal is preferred against the judgment dated 08.05.2023 passed by the learned JMJC, Sirsa, whereby respondents have been acquitted of the charges under Section 409,420,467,468,471 and 120-B of IPC.

2. Vide order dated 18.01.2024, the Lower Court record was called for. The same has been received today.

3. A complaint was made before the Deputy Commissioner, Sirsa. by the complainants-Dashrath (CW-1), Ex-Sarpanch of Gram Panchayat of Village Narayan Khera and Anil Kumar (CW-3), son of Smt. Vidya Devi, the then Panch of the above-mentioned Gram Panchayat. It was alleged therein that respondents 2 to 4, in connivance with each other, had misappropriated the funds of Gram Panchayat *Naryan Khera*.

The following were the allegations regarding the illegalities allegedly committed by the accused:-

1. Fraud in the acquisition of land for the installation of a tubewell.
2. Scam involving the construction of a privately sanctioned passage using Panchayat funds and property.
3. Purchases made at inflated prices exceeding the market value, without calling for any tenders , were comprehensively stated in the complaint.

The complainant, dissatisfied with the inaction of the competent authority, had approached the learned Magistrate by filing a complaint.

4. In the preliminary evidence, the complainant himself was examined as CW-1 and Data Ram, Naib Tehsildar as CW-2, Anil Kumar as CW-3, and Raj Pal Patwari as CW-4. Thereafter, vide order dated 21.03.2015, accused Sunita Devi, Satyaprakash, and Vidya Devi (Respondents 2 to 4) were summoned to face trial for commission of offences punishable under Sections 409,420,367,468 and 471 read with 120-B of IPC. The complaint against accused Bharat Singh, BDPO, was dismissed at the summoning stage itself.

5. Charges were framed against the said accused under Sections 420,409 read with 34 of IPC to which they pleaded not guilty and claimed trial.

6. During the trial, the complainant examined five witnesses, i.e. complainant himself as CW-1; Anil as CW-2, Data Ram as CW-3, Shashi (CW-4) and Parveen Kumar as CW-5. In

support of its case, the complainant and prosecution had also produced evidence in the form of Ex. C1, Ex. C2, Ex. C3 Resolutions of Gram Panchayat, Ex. C4/Ex.P4 Sale Deed, Ex. C5/P5 Mutation, Ex.C6, Ex.C7, Ex.C8, Ex.C9 Resolutions of Gram Panchayat, Ex. C10/P3 Complaint, Ex. C11/P1 Complaint, Ex. C12/P2 Postal Receipts, Ex. C13/P4 Property Registry, Ex. P6, Ex. P7, Ex. P8, Ex. P9, Ex. P10, Ex. P11, Ex. P12 Proposals/Resolutions of the Gram Panchayat, Ex. P13, Ex. P14 Revenue Records, Ex. P15, Ex. P16 Mutation. The defence examined one witness, namely, Mahavir (DW-1), and produced evidence in the form of Ex. DX Resolution of Gram Panchayat/ Declaration, in support of its case. After the conclusion of the trial, the learned Trial Court acquitted the accused person.

7. The grounds considered by the learned Trial Court for acquitting the Respondents are as under:-

1. The Material witnesses, namely, Rai Singh as well as one Satish, have neither been examined nor summoned through the process of the Court to prove that there was any prior agreement or willingness on their part to transfer any land for free for installation of a tubewell.
2. No evidence has been brought on record to prove that the amounts of Rs.2,80,000/- (for the purchase of 3 *marlas* of land) and Rs.4,10,100/- (for installation of a steel gate) have been received by respondent number 1 and 2 instead of the seller or have been purchased at an exorbitant price.
3. That there was no inducement made on the part of Vidya Devi (Respondent number 4) to the Gram Panchayat for selling her land with an intention to cause wrongful loss to the said gram panchayat or the public.
4. No evidence has been brought on record to prove that the accused persons were legally bound as per provisions of law for calling tenders for the purpose of carrying the

development projects in the village.

8. The learned counsel for the applicant, while assailing the judgment of acquittal passed by the trial Court, has argued that there is sufficient evidence on record corroborating the entire testimony of the complainants that the accused-respondents had misappropriated the public money and cheated the public. He has further submitted that on a perusal of the Resolutions passed by the Gram Panchayat of the said village, it is evident that the Gram Panchayat, had bought the land from Vidya Devi (Respondent no. 4) for installing a tubewell with the grant money of Rs. 3,00,000/- received from the Government, even when Vidya Devi's own husband, Rai Singh had earlier submitted an affidavit to give his four *marlas* land for the aforementioned purpose without any consideration. Even the said land had no specific *kill*a number and was bought at an excessive price as the same measured only 3 *marlas*, whereas the grant of Rs. 3 lakh had been released for the purchase of 4 *marlas* of land. Learned counsel also submitted that in terms of Rules 134 & 135 read with Schedule B & C of the Haryana Panchayati Raj Finance, Budget, Accounts, Audit, Taxation & Works Rules, 1996, the Gram Panchayat was legally obligated to call for tenders for carrying on developmental projects, which was never done. Furthermore, on the basis of all these facts and evidence, an inquiry was conducted by the SDO(C), Sirsa, against Respondent No. 2, and she was found guilty and had paid a fine of Rs. 6,676/-. It is, thus, argued that the learned trial Court, while passing the impugned judgment, has totally

ignored the said aspects of the matter.

9. After hearing the arguments advanced by the learned counsel appearing for the applicant and upon examining the material available on the record, the following issue arises for consideration before this Court:-

“Whether the ocular evidence alone, in the absence of any documentary evidence and material witnesses, is enough to prove the charges under Sections 409 and 420 of IPC?”

10. Now, in order to examine the issue formulated above, we have carefully examined the testimony of the complainant's witnesses and the evidence brought on record. Admittedly, the land for the installation of the tubewell was bought legally vide Annexures A-3, A-4, and A-5 passed by the Panchayat of Narayan Khera by way of a Resolution in the meeting of members having a complete Quorum. This Court finds that there is non-joining and non-examining of the material witnesses, including Rai Singh, husband of Respondent No. 4, Satish, named by CW-2 in his cross-examination and SDO(C), Sirsa, who had authored the inquiry report against respondent No. 2 in the instant case. Said report has not been proved before the trial Court and the mere fact that an inquiry had been conducted, does not make it admissible in evidence. Where there is no cogent and unimpeachable evidence to prove the alleged offence, the ocular testimony of complainants who themselves are interested parties, cannot be relied upon to bring home the guilt on the part of the accused. While considering somewhat similar issue, a Coordinate Bench of this Court, in Anil versus

Hanumant Singh, CRM-A-2411-2019 decided on 21.11.2022, has held as under:-

“8. A perusal of the records of the case of the learned trial Judge concerned reveals that the accused has successfully proven his defence, that through validly made resolutions, the public works concerned were completed in the village. If so, unless evidence became adduced that the quality of work was deficient, or, there was an under spending of amount as allotted for the relevant purpose, hence by the respondent concerned, thereupon, the allegations about the accused embezzling public funds would be rendered completely misfounded.”

11. Reference may also be made to the judgment of the Hon'ble Supreme Court in N. Raghavender Vs. State of Andhra Pradesh, CBI, MANU/SC/1242/2021, wherein it was held that non-examination of material witness would stand fatal to the case of the prosecution and that even if some admitted facts create a strong suspicion against the appellant, suspicion cannot take the place of proof, howsoever, strong it may be and therefore, in the absence of cogent and unimpeachable evidence to prove that the appellant has misappropriated the funds, conviction under the provisions of Section 409 IPC would not be attracted. Furthermore, failure to call for tenders doesn't prove the alleged offence as there is a marked distinction between a mere irregularity and patent illegality. It is well settled that if the proceedings conducted and completed by accused are not according to the Rules of the Gram Panchayat, the same can be treated as an irregularity and not an illegality. Reliance may also be placed on the judgments of the Hon'ble Supreme Court in

C.Chenga Reddy Vs. State of Andhra Pradesh, 1996(3) RCR SC 793 and Inderjit Singh Vs. State of Punjab 1995(3) RCR 75 SC.

12. We do not find that the prosecution was able to prove the ingredients of either Section 409 or Section 420 IPC. In order to prove the offence under Section 409, it must be proved that the accused has committed the criminal breach of trust in respect of the public property entrusted to him. Further, in order to bring home the guilt of an accused under Section 420 IPC, it must be established that there was cheating and dishonest inducing in respect of the delivery of property.

13. In Hridaya Ranjan Prasad Verma Vs. State of Bihar, (2000) 4 SCC 168, the Hon'ble Supreme Court, while interpreting Sections 415 and 420 of IPC, held that fraudulent or dishonest intention is a precondition to constitute the offence of cheating. It was held as under:-

“14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct

is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”

14. Thus, in light of the factual matrix of this case and considering the established legal position as discussed above, this Court is of the view that the counsel for the applicant has utterly failed to point out any illegality in the findings recorded by the trial Court. There is no conclusive proof in the instant case, more so supported by any documentary evidence or material witness that the accused had committed the offence under section 409 or 420 of IPC. Accordingly, the issue is decided in negative.

15. In criminal appeal against acquittal, what the appellate court has to examine is whether the finding of the learned court below is perverse and prima facie illegal. Once the appellate court comes to the finding that the grounds on which the judgment is based is not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the innocence of the accused is further strengthened by the finding of the court. At this point, it is imperative to consider the decision of the Hon'ble Supreme

Court passed in the case of Prandas Vs. State, 1950 SCC 62, wherein it was observed that:

“15. In our opinion, the true position in regard to the jurisdiction of the High Court under Section 417 of the Criminal Procedure Code in an appeal from an order of acquittal has been stated in Sheo Swarup v. King Emperor [Sheo Swarup v. King Emperor, (1933-34) 61 IA 398 : 1934 SCC Online PC 42] , in these words : (IA p. 404) “Sections 417, 418 and 423 of the Code [Ed. : Code of Criminal Procedure, 1898.] give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice.”

emphasis supplied

16. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case the order is clearly unreasonable, it is a compelling reason for interference.

But where there is no perversity in the finding of the impugned judgment of acquittal, the appellate Court must not take a different view only because another view is possible. It is because the trial Court has the privilege of seeing the demeanour of witnesses and, therefore, its decision must not be upset in the absence of strong and compelling grounds.

17. In view of the above, we do not find any illegality and perversity in the findings recorded by the trial Court. Accordingly, the present application is dismissed and special leave to appeal is declined.

(Sudhir Singh)
Judge

(Harsh Bunger)
Judge

22.02.2024
mahavir/ds

- Whether speaking/reasoned:

Yes/No
- Whether reportable:

Yes/No