

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

CRM-A-13-2022 (O&M)

DATE OF DECISION: -13.02.2024

Jaswinder Kumar

..... Applicant.

Versus

Kewal Singh

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ravi Dangi, Advocate for
Mr.Subhash Kumar, Advocate,
for the applicant.

HARKESH MANUJA, J.

1. Present application has been filed under Section 378 (3) Cr.P.C., 1973 for grant of leave to appeal against judgment of acquittal dated 03.03.2020 passed by the court of learned Judicial Magistrate Ist Class, Jalandhar, whereby respondent has been acquitted of the charges framed against him along with other co-accused.

2. Briefly, the facts of the case are that a complaint under Sections 420, 406, 120-B, 323, 504, 506 and 452 IPC, Police Station Bhogpur, Jalandhar was registered against the accused on the basis of statement made by applicant-complainant (Jaswinder Kumar), who was running an electronic shop, alleging that respondent-Kewal Singh, who used to visit his shop told him that he knew travel agents, who used to send people abroad and introduced Ashwani Kumar Sharma & Rajinder Singh, who further assured the complainant that they could send him to Spain and demanded Rs.6 lakhs. On 20.12.2012, complainant gave Rs.3 lakhs along

with copy of passport to Ashwani Kumar Sharma and Rajinder Singh and thereafter on 15.03.2013, a sum of Rs.2 lakhs was collected by Rajinder Singh from his shop. However, when accused failed to arrange visa for complainant, he demanded his money back and Ashwani Kumar Sharma @ Ashu issued a cheque bearing No.217512 of Rs.2,50,000/- dated 25.01.2014 drawn on AXIS Bank Ltd. Hoshiarpur but the said cheque was dishonoured on its presentation. Thereafter, when complainant contacted accused persons and told them that he will file complaint against them then Ashwani Kumar Sharma & Rajinder Singh along with three persons came to his shop, abused and attacked him, but he was saved due to intervention of people gathered at the spot. On 19.07.2015, again the complainant demanded his money back from the respondent as he had given money on his assurance. On this, respondent pushed and gave slaps to the complainant in presence of Daljit Singh, Ajay Kumar and other witnesses. The complainant reported the entire matter to the police but of no avail. Hence, the complaint was filed. Though, the complaint was filed against three accused, however, Rajinder Singh could not be arrested and was declared proclaimed offender vide order dated 11.03.2019 and proceedings against Ashwani Kumar Sharma were abated vide order dated 10.05.2019 on receipt of his death report.

3. In order to prove his case, complainant entered into the witness box as CW-1 and examined as many as four witnesses. Thereafter, statement of accused under Section 313 Cr.P.C. was recorded, wherein, he pleaded false implication and claimed being innocent.

4. On appreciation of evidence and after hearing arguments advanced by counsel for both the parties, learned trial Court acquitted the respondent vide its judgment dated 03.03.2020. The present application for grant of leave to appeal against aforesaid judgment has been filed by raising various grounds.

5. Learned counsel for the applicant vehemently argued that the learned trial court failed to appreciate that in order to prove his case, the applicant himself appeared as CW-1 as well as examined Ajay Kumar Bhatti, Daljit Singh and Sardari Lal as CW-2, CW-3 and CW-5 respectively, who fully corroborated his version, besides examining Rahul Kumar, Clerk, Punjab National Bank, Branch Binpalke, Bhogpur as CW-4 and tendered into evidence copy of complaint under Section 138 of the Negotiable Instrument Act, 1881 as Ex.C1 along with other documents as Exs.C3 to C5, which clearly proved the contents of complaint beyond any shadow of doubt, thus, the Trial Court wrongly acquitted the respondent.

6. Having heard the arguments advanced by learned counsel for the applicant besides having gone through the judgment passed by the learned trial Court and other documents available on the file, I am unable to find substance in the submissions made on behalf of the applicant.

7. As per the version of applicant, on 20.12.2012, he on the assurance of present respondent, gave Rs.3 lakh along with copy of passport to accused No.1-Ashwani Kumar Sharma and accused No.2-Rajinder Singh at his shop in presence of Daljit Singh, Ajay Kumar and Sardari Lal, who were examined as CW-2, CW-3 and CW-5 respectively and witnessed the taking of money by respondent-Kewal Singh, whereas, all these witnesses had come up with different versions regarding the person to whom money was given by

complainant on 20.12.2012. Moreover, during cross-examination Ajay Kumar, CW-2 admitted the factum of having knowledge that respondent-Kewal Singh was hospitalized from 19.12.2012 to 24.12.2012. Even CW-3 Daljit Singh in pre-charge evidence stated that complainant entrusted Rs.2,50,000/- on 20.12.2012 to Ashwani Kumar in the presence of Ajay Kumar, CW-3 and Sardari Lal CW-5, but the said witness nowhere disclose the name of respondent-Kewal Singh as the person to whom money was handed over on 20.12.2012. Moreover, as per the version of complainant, respondent-Kewal Singh had only introduced him to the travel agents and there was nothing on record to show that he induced the complainant to give money to them. In addition, Raman, Assistant Accountant, BBC Heart Care while appearing as DW-1 brought the record qua the admission and discharge of respondent-Kewal Singh i.e Ex.DA and Ex.DB showing that he was admitted in BBC Heart Care Hospital from 19.12.2012 to 24.12.2012.

8. On account of the aforementioned observations, I do not find any illegality or perversity in the judgment of acquittal passed by learned trial Court. In **“Arulvelu & another v. State represented by the Public Prosecutor & another”**, reported as 2009(4) RCR (Criminal) 638, the Hon’ble Supreme Court has laid down the following guidelines for the Appellate Court while dealing with cases where trial Court acquitted the accused :-

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

2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can

review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanor of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/ appellate courts must rule in favour of the accused.

6. An order of acquittal should not be lightly interfered with even if the Court believes that there is some evidence pointing out the finger towards the accused.

7. The trial court judgment cannot be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshaling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."

9. In the light of aforesaid guidelines, I have examined the judgment of the learned trial Court and the reasoning given by it for the acquittal of the respondent. In the facts and circumstances of the present case and based on the evidence available on record, learned trial Court, after properly appreciating the evidence, has rightly come to the conclusion that the complainant has failed to prove the case against the respondent beyond all reasonable doubts. The view taken by learned trial Court is not in any way unreasonable, perverse or impossible, rather, in the facts and circumstances of the case and the evidence led by both the parties, no second view is possible and plausible. The trial Court has rightly held that the complainant has failed to prove charges

under Sections 420 and 120-B IPC against the respondent beyond reasonable doubt, while relying upon testimony of DW-1 and admission of CW-2 as has been discussed in detail in the preceding part.

10. In view of the discussion made hereinabove, there being no illegality or perversity in the reasoning recorded by the trial Court, I do not find any ground to grant leave to appeal against the judgment dated 03.03.2020. Hence, the present application is dismissed.

13.02.2024
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No