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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A No.82 of 2022 (O&M)
Date of decision : 13.02.2024

BALJINDER KAURApplicant

Versus

KEWAL SINGH AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Saurav Bhatia, Advocate
for the applicant.

Mr. Rajinder K. Singla, Advocate
for the respondents.

PANKAJ JAIN, J. (ORAL)

Applicant seeks leave to appeal against the judgment passed by Judicial Magistrate 1st Class, Phillaur dismissing the complaint filed by the applicant bearing No.COMI/08/2017 dated 30th of January, 2017 under Sections 323/341/354/452/34 of the Indian Penal Code, at Police Station Nurmahal acquitting the respondents.

2. As per the contents of the complaint it was alleged that on 16th of November, 2016 accused in connivance with each other started digging the land to install pole outside the house of the complainant and when the complainant tried to stop them from doing so she was given slap blows by respondents No.2 & 3 and accused No.4 & 5 after trespassing into the house of the complainant gave pushes-blows. The respondents were

summoned and charges were framed against them *qua* offence punishable under Section 323 r/w Section 34 IPC and they were put to trial.

3. After analyzing the evidence threadbare the Trial Court found that the testimony of the complainant herself was enough to demolish the case as neither there was any medical examination nor the complainant ever approached the police as per her own admission and thus, the evidence was too discrepant to hold the respondents guilty.

4. While assailing the judgment of acquittal Ld. Counsel for the complainant/applicant argues that the Trial Court misdirected itself in dismissing the complaint solely for the reason that the medical examination was missing to prove the injuries on the body of the complainant. Reliance is being placed upon Section 134 of the Evidence Act. He further relies upon law laid down by the Apex Court in '**Ashok Kumar Chaudhary and others vs. State of Bihar, (2008) 12 SCC 173**'.

5. There can't be any dispute with the proposition as canvassed in Ashok Kumar Chaudhary's case (Supra). Indeed injured witness's testimony itself is sufficient but the same has to be of a startling character. Herein the drawback in whole of the testimony of the complainant is that she has failed to prove that she was indeed injured. She admitted that she did not know who was present at the time of installation of pole and she could not say as to why and how the occurrence took place. She further admits that she never got herself examined from the hospital. Even so she never approached the police. It was in these circumstances that the Trial Court

found that the testimony of the complainant/applicant was not trustworthy.

6. Ld. Counsel has not been able to point out that the aforesaid findings recorded by the Trial Court are result of misreading of evidence or can be said to be not a possible view. It is also not the case that any evidence on record was ignored by the Trial Court. The law w.r.t. exercise of appellate jurisdiction stands settled by Four Judges Bench of Apex Court in case of **Bansidhar Mohanty vs. State of Orissa, reported as AIR 1955 Supreme Court 585** wherein it was held as under :

“xx xx xx

4. The principles on which the High Court should act in an appeal from an order of acquittal have been quite clearly laid down by the Privy Council in the case of -- '**Sheo Swarup v. Emperor**', **AIR 1934 PC 227 (2)** at pp. 229-230 (A). The same principles have been so often reiterated by this Court that it is hardly necessary to restate them 'in extenso'.

It will be sufficient to refer to the decisions of this Court in -- '**Surajpal Singh v. The State**', **AIR 1952 Supreme Court 52**; - '**Puran v. State of Punjab**', **AIR 1953 Supreme Court 459** and '**Narayan Ittiravi v. State of Travancore-Cochin**' **AIR 1953 Supreme Court 478**. It is now well settled by the abovementioned decisions that while in an appeal under Section 417, Criminal Procedure Code of the High Court has full power to review the evidence upon which the order of acquittal was founded, nevertheless, in exercising the power conferred by the Code the High Court will give proper weight and consideration to such matters as (i) the views of the trial Judge as to the credibility of witnesses; (ii) the presumption of innocence in favour of the accused reinforced by the fact of his acquittal at the trial, (iii) the right of the accused to the benefit of any doubt and (iv) 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.”

7. The same was reiterated in the case of **Chandrappa and others vs. State of Karnataka, (2007) 4 SCC 415** wherein it was held that :-

“(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 emphasize 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.”

(emphasis supplied)

8. Further reiterated in the case of '**State of Uttar Pradesh vs. Banne @ Baijnath**' (2009) 4 SCC 271.
9. After going through the records of the case, this Court is unable to persuade itself to reach to the conclusion that the view recorded by the Trial Court can be said to be improbable rather the view taken by the Trial Court is plausible and probable view.
10. In view of above, the present application seeking leave to appeal is dismissed.

February 13, 2024		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No