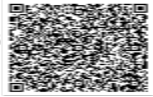


2024:PHHC:092938-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-A-1301-2023 (O&M)  
Reserved on 17.07.2024  
Pronounced on: 24.07.2024

MED SINGH ...Appellant  
Versus

SURESH KUMAR ...Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH  
HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Rajesh Kumar Dhankar, Advocate  
for applicant- appellant.

SUDHIR SINGH, J.

The present application seeking special leave to appeal is directed against the judgment dated 04.03.2023 passed by learned Additional Chief Judicial Magistrate, Bhiwani, in a complaint case, whereby the respondent has been acquitted of the charge framed against him.

2. Vide order dated 06.03.2024, the Lower Court record was called for. The scanned copy of the same was received.

3. The appellant-complainant had filed a complaint under Sections 409, 420, 467, 468, 471 IPC against the respondent alleging therein that the respondent was a Sarpanch of Gram Panchayat, Chang during the period 2005-2010. Between 24.04.2007 and 04.07.2009, a total amount of Rs.91,908/- was received by the village Panchayat out

of the earning as a wine share, but the respondent did not make any entry of it in the cash book of the village Panchayat and embezzled the same. It was further alleged that respondent had prepared two receipts for the payment of salary of tubewell operator for the period February 2009-2010 and forged the record by embezzling an amount of Rs.7,600/-. Satish Kumar, Auditor of the Panchayat, had prepared a report dated 29.03.2013 and sent it to Director Panchayat, Haryana, Chandigarh and other Panchayat Officers, finding the respondent guilty of embezzlement of the aforesaid amount i.e. Rs.91,908/- and Rs.7,600/-. The Block Development and Panchayat Officer, Bhiwani directed the respondent to deposit the embezzled amount, but the respondent did not deposit the same. Accordingly, vide letters dated 21.04.2015; 30.06.2015 and 25.08.2015, the Block Development and Panchayat Officer, had requested the police to lodge an FIR against the accused. As the police in collusion with the respondent did not take any action, the complaint in question was filed.

4. After considering the preliminary evidence, the accused was summoned for the commission of the offences under Section 409, 420, 467, 468, 471 IPC vide order dated 04.10.2018. The complainant, in his pre-charge evidence had examined as many as five witnesses PW-1 Satish Kumar; PW-2 Med Singh; PW-3 Sandeep Clerk BDPO, Bhiwani; PW-4 Pawan Kumar Clerk Officer of DETC, Bhiwani and PW-5 Sandeep Gram Sachiv and had produced on record various document i.e. Ex. P-1 to Ex. PW5/D. The trial Court framed charge against the accused under Section 409 IPC, to which he pleaded not guilty and claimed trial. The statement of the accused was

recorded under Section 313 Cr.P.C. wherein the accused denied all the incriminating evidence against him. In defence, no oral evidence was produced, but the documentary evidence in the form of Ex. D1 to D-11 was led.

5. The trial Court, after considering the rival contentions and the evidence on record acquitted the respondent of the charge framed against him vide the impugned judgment.

6. Learned counsel appearing for the appellant-complainant submits that during the given period (2005-2010), the respondent had served as a Sarpanch of Gram Panchayat, Chang. It is further submitted that the acts of misfeasance and malfeasance on the part of the respondent, were enquired into by the Block Development and Panchayat Officer, and it was found that he had embezzled the amount of Rs.91,908/- and Rs.7,600/-. It is further submitted that the Block Development and Panchayat Officer had written various letters to the police for registration of an FIR against the respondent, but the respondent colluded with the police and the FIR was not registered. It is further submitted that the report of the Block Development and Panchayat Officer, which had found the respondent guilty, was never challenged and therefore, the same was sufficient to prove the guilt on the part of the accused.

7. We have heard learned counsel for the appellant and have also gone through the record of the case.

8. The sole question that requires consideration by this Court is whether the impugned judgment of acquittal requires any interference by this Court.

9. A perusal of the impugned judgment would show that the trial Court, on the basis of the evidence on record, has found that in the account statement of the bank Ex. PW5/D and Mark D-2, the amount of Rs.91,908/- had duly been credited in the bank account of the Village Panchayat and the said fact was also admitted by PW-5 Sandeep, Village Panchayat Secretary. It was, thus, found that the said amount was not embezzled by the respondent. It was further found that it was the Village Secretary, who was to make entries in the cash book and not the respondent. The allegation as regards embezzlement of Rs.7,600/- did also not find any favour. On the basis of voucher Ex. PW5/E, it was found that a sum of Rs.7,600/- was paid to the tubewell operator (Rajesh Kumar) for the period February 2009 to May 2009. Still further, it was found that remuneration of Rs.22,200/- had been paid to Rajesh Kumar, tubewell operator, for the period February 2009 to January 2010. The said amount was paid to the tubewell operator at the rate of Rs.1,850/- per month. On the basis of the Ex. D-4 (proceedings of village Panchayat dated 24.04.2008), it was found that the remuneration of the tubewell operator was fixed at the rate of Rs.3,500/- per month and the respondent did not make any payment in excess and therefore, it could not be said that he had embezzled the aforesaid amount or had caused any loss to public exchequer.

10. Indisputably the allegations against the respondent were in respect of the alleged embezzlement of the Panchayat funds. It is also an admitted fact that the said allegations pertained to the period when the respondent was the Sarpanch of Gram Panchayat Chang (during the period 2005-2010). On the basis of Ex.PW5/D (the

document produced in evidence by the complainant) and Mark D2 that it was found that the amount of Rs.91,908/- had duly been credited in the bank account of the Village Panchayat. As regards the amount of Rs.7,600/- allegedly embezzled by the accused-respondent, under the guise of payment to the tubewell operator, it was found that the respondent had paid the said amount to the tubewell operator Rajesh Kumar, vide Ex.PW5/E. It has also come in the impugned judgment that the respondent had not paid any excess amount to the tubewell operator.

11. In order to make out a case of embezzlement on the part of any public servant or public official, the guilt on his part as regards the embezzlement of the public funds, misappropriation or causing loss to the public exchequer must be proved. However, in the instant case, the complainant/prosecution has failed to prove the same and rather, it was established on record, from the evidence led by the complainant himself that the amount in question had either been credited in the bank account of the Gram Panchayat or utilized for the Panchayat works. In our opinion the impugned judgment of acquittal passed by the learned trial Court is based on the evidence on record. It could not be shown that any evidence has been misread or not taken into consideration.

12. 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 *Mrinal Das versus State of Tripura*, (2011) 9 SCC 479, it has been observed that:

“13. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, it being the final Court of fact, is fully competent to reappraise, reconsider and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate Court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent Court. If two reasonable views are possible on the basis of the evidence on record, the appellate Court should not disturb the findings of acquittal.

14. There is no limitation on the part of the appellate Court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate Court can also review the conclusion arrived at by the trial court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate Court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are “compelling and substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference. ... ..”

In the case of **Ghurey Lal Vs. State of Uttar Pradesh**, (2008) 10 SCC 450 in para no. 75, the Hon'ble Supreme Court reiterated the said view and observed as follows:

"75. The trial court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate Court should be slow to interfere with the decisions of the trial court. An acquittal by the trial

court should not be interfered with unless it is totally perverse or wholly unsustainable."

13. 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.

14. Accordingly we do not find with the impugned judgment of acquittal passed by the learned trial Court requires any interference by this Court. Consequently, the present application is dismissed and special leave to appeal is declined.

[ SUDHIR SINGH ]  
JUDGE

[ KARAMJIT SINGH ]  
JUDGE

24.07.2024  
Himanshu

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |