

242

**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH****CRR-2925-2019****Date of Decision: 19.03.2024****Balbir Singh****...Petitioner****Versus****State of Punjab and another****...Respondents****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Ankit Joshi, Advocate  
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab

\*\*\*

**Harpreet Singh Brar, J. (Oral)**

1. The present revision petition is preferred against judgment dated 25.07.2019 passed by learned Additional Sessions Judge, Ludhiana whereby appeal against judgment of acquittal dated 08.12.2017 passed by learned Judicial Magistrate Ist Class, Payal in FIR No. 164 dated 07.06.2011 registered under Section 420 of the IPC at Police Station Payal, was dismissed.

2. Briefly, the facts are that respondent no.2-accused Tarlok Singh agreed to sell his land measuring 17 kanal 17 marlas situated at village Chomon to the petitioner-complainant vide agreement dated 28.01.1997. He had agreed to execute and register the said deed in favour of the petitioner on or before 28.01.1998 but failed to do the same. The disputed property was mortgaged with Bank of India and one Megh Singh. The petitioner filed a civil suit for specific performance which was decided vide judgement and decree dated 18.01.2002 passed by learned Additional Civil Judge (Senior Division), Khanna. The petitioner deposited Rs. 70,000/- in the treasury and Megh Singh further assigned his mortgage rights in favour of Teja Singh vide sale deed dated 05.04.2002.

Thereafter, the petitioner filed a petition before Sub Divisional Magistrate, Payal

for redemption of the property while respondent no. 2 also filed an appeal in the

Court of learned District Judge, Ludhiana. In connivance with each other, respondent no. 2 and Tarlok Singh got the petitioner to execute a pronote of Rs. 6,00,000/- and thereafter, executed a sale agreement in favour of Kharak Singh and Manjit Singh.

3. On assessing all the material available on the record, the learned trial Court acquitted respondent no.2-accused vide judgment dated 08.12.2017. Aggrieved by the same, the petitioner-complainant preferred an appeal before the learned lower Appellate Court, which was dismissed vide judgment dated 25.07.2019.

4. Learned counsel for the petitioner contends that the petitioner had been appearing before the learned trial Court and was examined. However, his cross-examination was only partly conducted and learned counsel for the accused sought adjournment on the grounds that fresh summons were required to be issued through SSP, Khanna to official witnesses. Due to paucity of time, the cross-examination of the petitioner could not be completed and on 08.12.2017, the prosecution evidence was closed when the petitioner could not appear due to a death in the family.

5. Having heard the learned counsel for the petitioner and after perusing the record with his able assistance, it transpires that the prosecution has only examined one witness- PW1-Balbir Singh, the petitioner, to establish its case, who has deposed that respondent no.2 had entered into a sale agreement with him qua 17 kanla 17 marlas of land on 28.01.10997 and the date of execution was fixed for 28.01.1997, which was not done. However, admittedly, the petitioner was not cross-examined when he appeared as PW1, as such, his testimony cannot be read into evidence. The prosecution has miserably failed to establish the prosecution case beyond reasonable doubt.

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. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (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 trial Court or the learned lower Appellate Court which warrants interference by this Court. As such, there is no merit in the present application and hence, the leave to appeal is denied.

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

(HARPREET SINGH BRAR)  
JUDGE

19.03.2024  
Ajay Goswami

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