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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARHCRM-A-1356-2023(O&M)
Date of Decision:-04.12.2024

STATE OF HARYANA

.....Applicant

VERSUS

AVINASH KAUR

.....Respondent

CORAM:- HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDIPresent:- Mr. Ravish Kaushik, Addl. AG, Haryana
for the applicant.

JASJIT SINGH BEDI, J.CRM-41256-2023

For the reasons stated in application, same is allowed. Delay of 206 days in filing the application for grant of leave to appeal is condoned.

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The present application under Section 378(3) of Cr.PC has been filed for grant of leave to appeal against the judgment of acquittal dated 24.11.2022 passed by the Addl. Sessions Judge, Panchkula.

2. The FIR was registered on 16.12.2011, the judgment of acquittal passed by the Addl. Sessions Judge, Panchkula is dated 24.11.2022, the appeal was filed on 21.08.2017 and the matter is being taken up for hearing now after 13 years of the registration of the FIR.

3. The brief facts of the prosecution case are that a preliminary enquiry of various officials of Municipal Committee, Pinjore was entrusted

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to DSP Raj Pal. It was alleged that during the years 2008-2009, the work of installation of iron grills was illegally given to one M/s Shiva Engineering, Pinjore without inviting any tenders and in this manner, a sum of ₹85,18,875/- was shown to have been spent on this work. No tenders were invited as per rules and the officials of Municipal Committee namely Kashmiri Lal, Secretary, Rajinder Yadav, Accountant, Hargu Lal, Clerk and Kuldeep Singh Kika, President were found to have received the quotations for the installation of iron grills. The work was allotted at different intervals by taking quotations from M/s Harjindra Engineering Works and Charanjeet C/o M/s Shiv Engineering. However, Kashmiri Lal, Secretary did not take any estimate from the technical branch of Municipal Council, Pinjore and did not form any committee for this purpose. Charanjit Lal Puri, during the course of investigation had given an affidavit to the effect that as per record, there were 69 bills which pertain to his firm and out of these bills, 22 bills were prepared by Hargu Lal, Clerk by forging the record and by putting forged signatures. Harjinder Singh C/o M/s Harjindra Engineering Works submitted in the affidavit that on 18.02.2009, he prepared bills amounting to ₹1,49,940/- and ₹1,49,960/-, total amounting to ₹2,99,900/-. The estimate pertains to his firm but the quotation and the bills were forged and prepared by Hargu Lal, Clerk. It was also alleged that during the years 2008-2009, a sum of ₹18 Lacs were spent for lifting debris/malba from the market of Pinjore. However, no tenders were invited and the work was given to Mohan Lal, Sanitary Contractor. During the enquiry, it was revealed that officials of Municipal Council did not prepare any estimate for the said work. In chalking out this work, Hargu Lal, Clerk, Kashmiri Lal, Secretary and

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Kuldeep Singh Kika, President of Municipal Council, Pinjore, were hand in gloves with Sanitary Contractor Mohan Lal to whom the work was given. Mohan Lal, Sanitary Contractor during enquiry, himself admitted that he had prepared 3 forged quotations and allegation was levelled that the aforementioned accused-persons in connivance with each other gave work of ₹9,49,193/- to Mohan Lal, Sanitary Contractor without any work order, which was not verified at the spot by accused Avinash Kaur and other Municipal Councilors i.e. Smt. Maya Devi, Smt. Suman Bhandar, Lajpat Rai, Arvind Sharma, Jagmohan Dhiman, Chhinder Pal, Sanjeev Kumar and Smt. Nirmala Devi and these persons in connivance with each other caused loss to the tune of ₹9,49,193/-. It was further alleged that during the year 2009, the work regarding cleaning of septic tanks was given to the said Sanitary Contractor Mohan Lal without giving any public notice in any newspaper and in this manner, an amount of Rs.5 Lacs was illegally used. In allotting this work, Kashmiri Lal, Secretary, Rajender Wadhwa, Accountant, Hargu Lal, Clerk and Kuldeep Singh, President of Municipal Council, Pinjore were hand in gloves with each others for giving the work to Mohan Lal, Sanitary Contractor on the basis of forged quotations without any public notice or calling tenders. During the years 2007-2008, a sum of ₹8 Lacs was spent for the installation of traffic lights at T-point, bus-stand, Pinjore. During investigation, it was revealed that Rajender Wadhwa, Accountant, Hargu Lal, Clerk, Ram Kishore, Ex-Secretary and Kuldeep Singh Kika, President of Municipal Council, Pinjore, in connivance with each others without calling any tender and by doing over writing over comparative statements gave the work to M/s. Sonu Electricals, Kalka and also got



lodged a false DDR with respect to misplacing of the file related to the work and caused a loss of Rs.3,44,675/- to Municipal Council, Pinjore.

4. After conducting a preliminary enquiry, a report was submitted to Director General of Police (Vigilance) and thereafter, on the basis of the order of the Govt., DSP Raj Pal moved a complaint for registration of an FIR upon which the FIR was registered by ASI Rajinder Kumar. During the course of investigation, the accused persons were arrested, charge-sheeted and were acquitted by the then learned Additional Sessions Judge, Panchkula vide judgment dated 30.07.2016. However, accused Avinash Kaur was declared a proclaimed offender in the present FIR and when she surrendered before the Court, a supplementary challan was filed against her. She suffered her disclosure statement. Statements of other witnesses u/s 161 of Cr.P.C. were recorded. After completion of the formalities of the investigation, a report u/s 173 of Cr.P.C. was submitted for trial of accused Avinash Kaur.

5. On presentation of the supplementary report under section 173 Cr.P.C., copy of the documents as envisaged under section 207 Cr.P.C. were supplied to the accused. She was ordered to be charge-sheeted for the commission of offences punishable under Sections 409, 420, 467, 468 of IPC, and Section 13(1)(D) and 13(2) of the Prevention of Corruption Act on 06.10.2017, to which she pleaded ‘not guilty’ and claimed trial.

6. To prove its case, the prosecution examined the following witnesses:-

	Witness	Date on which recorded
PW-1	HC Parmod Kumar	09.01.2018



PW-2	Karam Chand Dhiman	20.07.2018
PW-3	Rajesh Rana	20.07.2018
PW-4	Nirmal Singh	20.07.2018
PW-5	Narinder Kumar	06.09.2018
PW-6	Mohan Lal	06.09.2018
PW-7	Rakesh Kumar	06.09.2018
PW-8	Gulshan	22.10.2018
PW-9	Banu Ram @ Babu Ram	22.10.2018
PW10	Narender Kumar	17.12.2018
PW11	Subhash Kapoor	17.12.2018
PW12	Sunil Kumar	14.01.2019
PW13	Pankaj	14.01.2019
PW14	Diwan Chand	25.02.2019
PW15	Prem Singh	25.02.2019
PW16	Sandeep Singh, Executive Engineer	23.04.2019
PW-17	Gurcharan Dhiman, Ex. Municipal Councilor	23.04.2019
PW-18	Krishna Devi, Sarpanch	14.05.2019
PW-19	Insp. Rajesh Kumar	06.08.2019
PW-20	Madan Lal, Chief Sanitary Inspector	16.10.2019
PW21	Sanju, Driver	05.11.2019
PW22	DSP Suresh Kumar	19.11.2019
PW23	Krishan Kumar, Office Assistant	19.11.2019
PW24	Harminder Kumar, Assistant	26.02.2020
PW25	Badri Prasad, DSP (Retd.)	08.02.2021
PW26	Raj Pal Inspector	08.02.2021
PW-27	Nihal Singh, DSP (Retd.)	19.07.2021
PW-28	Kanwal Kumar, SDJM, Bilaspur	19.07.2021
PW-29	ASI Sita Ram	10.11.2021
PW-30	Ghanshyam Sharma, Clerk	05.05.2022/ 26.05.2022

7. PWs Pardeep Kumar, V.K.Kamboj, Accruram Sharma and Jiya Lal, Tarsem Chand, Harpal Singh, Gulshan Kumar, Balwant Singh, L/Ct Vimal Kaur, Vijay Kumar Kala, Lal Singh, Suresh Kumar, Criminal Ahlmad of the court of then ASJ, Panchkula, Ct. Kulbhushan, Mahavir, Savinder Singh, Dr. Satish Kumar, Senior Scientific Officer and witnesses listed at



Sr.No.26 to 50, 52, 56, 57, 59, 60, 61, 66 to 73, 77, 79, 80 and 81 were given up by the Public Prosecutor and after tendering FSL reports dated 31.12.2013 (Ex.PX) and dated 19.04.2012 (Ex.PY) he closed the prosecution evidence.

8. Documentary evidence was also adduced by the prosecution, the details of which are under:-

Ex/Mark	Nature of document	Dated
PA	Complaint	16.12.2011
PB	FIR No.6 dated 16.12.2011	16.12.2011
PC	Endorsement on Ex.PA	16.12.2011
PD	Recovery memo of record	21.12.2011
PE	Complaint	16.12.2011
PF	Complaint	21.05.2009
PG	Complaint	08.01.2010
PH & PI	Assessment	16.06.2011& 07.07.2011
PJ	Letter	23.08.2011
PK	Letter	22.10.2008
PL	Letter	16.09.2008
PM	Letter	21.10.2008
PN	Complaint	15.12.2009
PQ	Disclosure statement	11.04.2017
PR	Disclosure statement of accused Avinash Kaur	11.04.2017
PW20/A	Agreement	30.05.2009
PW20/B	Recovery memo	01.03.2012
PW21/A to C	Quotations	02.08.2009/ 11.03.2009
PW23/A to C	Quotations	07.08.2009
PW24/A	Zimni order	16.10.2012
PW25/A	Request letter	18.08.2009
PW28/A & B	Statement of Nirmala	12.09.2012
PW29/A	Arrest Form	11.04.2017
PX	FSL Report	31.12.2013
PY	FSL Report	11.04.2012
PW30/A	Copy of proceeding book	



PW30/B	Recovery memo	09.04.2012
PW30/C	Copy of Tax Demand and Collection register	2009-2010
PW30/D	Copy of Tax Demand and Collection register	2002-2003
PW30/E	Copy of Tax Demand and Collection register	2002-2003
PW30/F	Copy of Tax Demand and Collection register	2009-2010
PW30/G	Recovery memo of record	
PW30/H	Letter	30.08.2012
DW/1	Letter	24.04.2009
DW/2	Order	21.04.2009
Mark A	Letter	20.02.2019
Mark B	Death Certificate of Puran Chand	22.10.2018
Mark-1	Death certificate of Tarsem Chand	11.09.2018
Mark P-1	Death certificate of Lal Singh	
Mark A	Death Certificate of Vijay Kumar Kala	26.02.2019

9. Statement of the accused was recorded in consonance with the spirit of Section 313 Cr.P.C, wherein she denied the allegations levelled against her by the prosecution and pleaded her false implication in the present case. She stated that she was innocent. She had not committed the alleged offences and during that period she was not a Municipal Councilor when the alleged offence committed.

10. In order to prove her defence, the accused examined Ashok Kumar, Accountant as DW1 who deposed that he had brought the summoned record in respect to letter No.290-307 dated 24.04.2009 issued by the office of SDOC Kalka to hold the first meeting of the newly elected MC members on 01.05.2009 at 11.00 AM, which was Ex.DW/1. He had also brought the original order of the Deputy Commissioner, Panchkula regarding notification of newly elected members on 06.04.2009 which was

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Ex.DW/2. Thereafter, the accused closed her defence evidence.

11. Based on the evidence led, the accused/respondent was acquitted by the Court of Addl. Sessions Judge, Panchkula vide judgment dated 24.11.2022.

12. It is the aforementioned judgment which is under challenge in the present case.

13. The learned counsel for the appellant/State contends that the Trial Court did not appreciate the evidence produced by the prosecution and acquitted the accused/respondent on the basis of conjectures and surmises. The material witnesses had duly supported the prosecution version which fact had not been considered in its proper perspective in an objective manner. The Trial Court, however, erroneously proceeded to acquit the accused/respondent on the ground that some of the prosecution witnesses had not supported the prosecution case. The FSL Report had also established the guilt of the accused/respondent. He, therefore, contends that leave be granted to file an appeal against the acquittal of the respondent/accused.

14. We have heard counsel for the applicant-State and have gone through the Lower Court record.

15. A supplementary challan was filed by the State Vigilance Bureau against the accused as she had been declared a proclaimed offender. However, all the other accused were acquitted by the Trial Court vide judgment dated 30.07.2016. In the present case, names of 88 persons were mentioned in the list of prosecution witnesses. However, the prosecution was able to examine only 30 witnesses for substantiating its case.

16. PW-1 HC Parmod Kumar is a formal witness who registered the

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FIR. PW-2, PW-3 and PW-17 being complainants failed to establish any allegation against the accused with regard to the commission of the offence. PW-4 was concerned with cleaning of septic tanks and the accused has no role whatsoever in this regard. PW-5 Narender Kumar turned hostile. PW-6, PW-7, PW-9 to PW-15 deposed with regard to removal of debris for which they paid money. However, during cross-examination PW-6, PW-7, PW-9 to PW-14 failed to produce any receipt. However, PW15 stated that the debris of his shop were lifted by Municipal Council. In this manner, he contradicted his own statement as deposed by him in his examination-in-chief. PW-16 Sandeep Singh could not produce the original documents of Ex.PJ to Ex.PM so as to authenticate the facts in respect to the aforementioned documents mentioned by him. PW-17 Gurcharan Dhiman and PW-18 Krishna Devi fairly admitted that they did not receive any complaint from any resident of their Ward. The complaint Ex.PN though moved by them alongwith other persons was only on the basis of perceptions of some other persons and not of their own. They also admitted that they were not present in any of the meetings of the MC Pinjore, wherein, quotations were received and various works allotted. They also admitted that they were not present at the time when the officials of Municipal Council allotted and got executed the work. Further both these witnesses admitted that removal of garbage/debris from the National Highway was work of urgent nature as it was causing harassment and disturbance to the movement of traffic. Both these witnesses also admitted that they had not carried out any technical inspection of the work carried out by the Municipal Council at their own level regarding the complaint Ex.PN. PW-19 Inspector Rajesh Rana deposed

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during cross-examination that no recovery was effected after the disclosure statement of the accused. PW20 Madan Lal Chief Sanitary Inspector during cross-examination admitted that document Ex.PW40/A was neither signed nor executed in his presence. He did not have any personal knowledge regarding this document and its execution. He was not posted at Municipal Committee Pinjore during the period when the Municipal Council had allotted the work to Mohan Lal, Sanitary Contractor. It is admitted by him that he had not given any such document to the police at any stage of investigation and also admitted that Ex.PW20/A had not been signed by him. PW-21 Sanju during cross-examination admitted that he did not know who had appended signatures in English on the quotation. Contractor Mohan Lal never told him about any quotation prepared by him in his name. PW-22 DSP Suresh Kumar State Vigilance Bureau did not play any role in this case and admitted that he was not joined in the investigation at any point of time. PW-23 Krishan Kumar, Office Assistant MC Pinjore during cross-examination admitted that Ex. 23-A was a photocopy. The document had not been signed by him. He did not know when and by whom this document was signed. This witness admitted that Ex.P23/B and Ex.23/C were also photocopies. It was also admitted that these documents were not certified by any authority of Municipal Corporation, Pinjore Zone and the same were also not signed by him. He had not joined the investigation in the case and had no knowledge about the case. PW-24 Harminder Kumar Assistant/Translator during cross-examination stated that he had no knowledge about this. PW-25 Badri Parshad DSP (Retd.) and PW-26 Raj Pal admitted that they deposed the facts in examination-in-chief as was



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noted down by them on a paper. This fact itself states their credibility as witnesses. It was also admitted by these witnesses that all exhibits mentioned in their examination-in-chief were photocopies. The incident regarding which the present case was registered pertains to the year 2007 to 2009 and they could not tell the exact date pertaining to the commission of crime, upon which the FIR was registered. PW-30 Ghanshyam Sharma, Clerk admitted during cross-examination that the documents Ex.PW30/A to Ex.PW30/H were photocopies of the records and he could not tell who had prepared these documents. The witness also deposed that he had not brought the assessment record pertaining to Ex.PW30/C to Ex.PW30/F.

17. The only allegation against the accused is that she signed some bills for lifting malba/ debris from the market of Pinjore. A preliminary enquiry was conducted by DSP Raj Pal (PW32 in the main case) but he could not depose due to his death in the present case. The accused was elected as Municipal Councilor on 01.05.2009 vide Ex.DW/1. In view of Ex.DW/1 no case can be made out against the accused because the period of commission of offence mentioned is prior to the joining of the accused as Municipal Councilor.

18. Importantly, the co-accused of the accused faced trial and were acquitted vide judgment dated 30.07.2016 passed by the then Addl. Sessions Judge, Panchkula. The copy of the said judgment is marked as 'A'. Strangely enough, the State did not file an appeal against the said judgment as has been candidly admitted by the counsel for the appellant-State.

19. As to how an appeal against a judgment of acquittal is to be dealt with, the Hon'ble Supreme Court in *Kallu @ Masih & Ors. Vs. State*



of Madhya Pradesh 2006(1) RCR (Criminal) 427 has held as under:-

“ 8.While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

20. In view of the aforementioned discussion and keeping in view the law laid down in ***Kallu @ Masih & Ors. Case (supra)***, we find no reason to interfere with the well-reasoned judgment of acquittal passed by the Addl. Sessions Judge, Panchkula. Therefore, the application seeking grant of leave to appeal stands dismissed and leave to appeal is declined.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

04.12.2024
Jitesh

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