HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Leave To Appeal No. 66/2021

State Of, Rajasthan

----Appellant

Versus

1. Rakesh Verma Son Of Shri Gopal Singh, Resident Of House No. 6/438 Vidhayadhar Nagar, Jaipur At Present Sub Inspector, Police Station Lalsot, District Dausa.
2. Kaluram Meena Son Of Shri Ganpat Lal Meena, Resident Of Village Pipalkheda, Tehsil Rajgarh, Police Station Rain, District Alwar At Present L.c. No. 911, Police Station Lalsot, District Dausa.
3. Hemraj Mali Son Of Shri Bhuraram Mali, Resident Of Nehru Colony, Lalsot At Present Cleaner On Jeep, Jeep Stand, Lalsot District Dausa.

----Respondents

For Appellant(s)	:	Mr. B.L. Nasuna, Dy.GA
For Respondent(s)	:	Mr. Ashvin Garg

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

20/12/2024

1. Instant leave to appeal is preferred by appellant State aggrieved from judgment of acquittal dated 07.12.2020 in regular criminal case No.48/2015 arising out of FIR No.01/2006 registered at P.S. ACB Jaipur passed by learned Special Judge (P.C. Act Cases) No.2, Jaipur to challenge the order of acquittal of respondents Rakesh, Kaluram and Hemraj from charge under Sections 7, 13(1)(d) read with Section 13(2) of PC Act read with Section 120B IPC.

2. Learned Public Prosecutor while relying upon grounds of appeal submitted that after a complaint, a verification proceeding was conducted and trap was planned. He also submitted that the

work was pending with respondent No.1 and for work, he demanded ₹15,000/- from the complainant, in addition to bribe already received. He also submitted that after verification of complaint, a proper trap was planned. He also submitted that prior to complaint, respondents Rakesh Verma and Kaluram has received ₹18,000/- and after verification when complainant has paid ₹7,000/- to respondent Hemraj on behalf of respondent Rakesh Verma and Kaluram then he was caught red handed. He also submitted that after procuring prosecution sanction against respondent Nos. 1 and 2 a charge-sheet was filed wherein prosecution has examined 19 witnesses and exhibited 56 documents. He referred the evidence on record and submitted that learned trial court without considering the material evidence has recorded order of acquittal therefore the judgment of the trial court is perverse and illegal.

3. Aforesaid contentions were opposed by learned counsel for respondents and he submitted that complainant has not supported the case of prosecution. He also submitted that complainant has never met respondent Nos. 1 and 2 and without any verification the ACB has planned trap. He also submitted that the tape recorder which was called by the trial court and played during cross-examination of PW-3 has not supported the case of prosecution. He further referred the statement of PW-7 Bhanwar Lal and submitted that he turned hostile and not supported the case of prosecution. He also referred the statement of other witnesses and submitted that all other trap witnesses were employees of ACB and their evidence is stereotype. He further

submitted that none of them has corroborated that respondent Nos. 1 and 2 had ever made any demand and in pursuant to demand an amount of bribe was paid by the complainant. At last, he submitted that after considering the material contradictions and discrepancies in the statement of prosecution witnesses, the trial court has passed an order of acquittal with sound reasons and there is no ground for interference in the order of acquittal recorded by the trial court.

4. Heard learned counsel for the parties. Perused the record including original record of the trial court.

5. The facts giving rise to instant leave to appeal is that PW-3 complainant Ramesh Kumar Meena has filed a written complaint before Additional SP, ACB SIU, Jaipur against respondent Nos. 1 and 2. As per complaint, the complainant has already paid ₹18,000/- to Rakesh Verma but he is demanding ₹15,000/- more for his work. On receipt of this complaint, same was verified and after verification, trap was arranged. During trap proceedings ₹7,000/- was paid by complainant at the instance of ACB to respondent No.3 Hemraj on behalf of respondent Nos. 1 and 2. ACB has caught red handed Hemraj and arrested all three respondents. After investigation and procuring prosecution sanction against respondent Nos. 1 and 2 charge-sheet was filed against all three respondents.

6. Learned trial court has framed charge under Sections 7, 13(1)(d)(2) of PC Act 1988 read with Section 120B IPC. Total 19 witnesses were examined by the prosecution including complainant. Total 56 documents were exhibited by the

prosecution. The respondents were examined under Section 313 Cr.P.C. and they have examined DW-1 and DW-2 in defence.

7. The star witness of the entire proceeding is PW-3 Ramesh Kumar. A perusal of testimony of Ramesh Kumar clearly indicated that during evidence of prosecution he did not remained firm and he changed his version in cross-examination. The admission in cross-examination clearly indicated that he did not met respondent Nos.1 and 2. The evidence is not supportive for prosecution with respect to respondent nos. 1 and 2. Herein the evidence further suggested that when tape recorded version was played before the trial court then same did not helped prosecution to nail respondents for the charge made against respondent. Herein the trial court has noticed that PW-19 Rajvardhan Singh has not investigated about the SIM card ownership of respondents which were used for communication between complainant and respondents. Herein denial of PW-3 and absence of independent eye witness in trap proceeding clearly dented the case of prosecution. Moreover the evidence collected by the prosecution were not sufficient in any manner, and the prosecution has failed to establish connect of respondent No.3 with respondent Nos. 1 and 2. The complainant has alleged that the respondent No.1 has received ₹18,000/- from his uncle but his uncle was not examined by prosecution. The prosecution has failed to prove payment of bribe to respondents No. 1 and 2 (Public Servants).

8. A demand is sine qua non for establishment of charge against respondent Nos. 1 and 2 who were public servant and herein learned trial court on the basis of evidence of prosecution

has drawn a conclusion against the prosecution. A perusal of evidence of prosecution also suggested that any demand, pendency of work or releasing any document after receipt of bribe has not established from record. The trial court has considered in detail the material contradiction in the deposition of witnesses of prosecution, sufficient to disbelieve the case of prosecution.

9. Having considered the reasons as assigned by the trial court, I am of considered view that trial court has not committed any error while recording acquittal on basis of oral and documentary evidence against the respondent Nos. 1 to 3. Learned Public Prosecutor has failed to show that the order of acquittal was recorded contrary to the material on record therefore there is no scope of interference in the order of acquittal passed by the trial court.

10. Hon'ble Supreme Court in the cases of **Chandrappa & Ors. v. State of Karnataka : (2007) 4 SCC 415; Nagabhushan v. State of Karnataka : 2021 (5) SCC 222** and **Rajesh Prasad V. The State of Bihar & Anr.: (2022) 3 SCC 407,** specifically observed that in case of consideration of an appeal from order of acquittal, there is double presumption in favour of accused and these presumptions are - firstly, presumption of innocence under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless proved guilty by a competent court of law. Secondly, the accused having secured an order of acquittal, the presumption of innocence is certainly not weakened, but reinforced, reaffirmed and strengthend by the Trial Court.

11. Hon'ble Supreme Court in cases of **Atley v. State Of Uttar Pradesh : AIR 1955 SC 807; Sanwat Singh & Others v. State Of Rajasthan : 1961 AIR SC 715; M. G. Agarwal v. State Of Maharashtra : 1963 AIR SC 200; Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra : (1973) 2 SCC 793; Ramesh Babulal Doshi vs. State of Gujarat : (1996) 9 SCC 225; Ajit Savant Majagvai vs. State of Karnataka : (1997) 7 SCC 110 and Nepal Singh v. State of Haryana : (2009) 12 SCC 351**, have considered the role of Appellate Court in considering situation arising out of order of acquittal and settled the proposition that the Appellate Court has full power to review, re-appreciate and re-consider the evidence upon which the order of acquittal is founded, however, Appellate Court is duty bound to keep in mind to that there is double presumption in favour of accused.

12. Considering the entirety of facts and circumstances, I am of considered view that leave to appeal filed by State to challenge order of acquittal passed by trial court requires no interference, hence there is no ground to set aside the order of acquittal.

13. Accordingly, leave to appeal is hereby dismissed.

(ASHOK KUMAR JAIN),J

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