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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CRM-A-230-MA-2014 (O&M)

Reserved on : 30.01.2025

Pronounced on : 13.02.2025

**Municipal Council Kharar through Roshan Lal, Clerk
Municipal Council Kharar**

...Applicant

Versus

Jai Kishan Filling Station (Petrol Pump), Mundi Kharar

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. J. S. Toor, Advocate
for the applicant.

Mr. Nikhil Goyal, Advocate
for the respondent.

MANISHA BATRA, J. (Oral)

1. This is an application, filed by the applicant/complainant Municipal Council Kharar under Section 378(3) of the Code of Criminal Procedure (*for short 'the Code'*), seeking leave to file and pursue appeal against the judgment dated 29.04.2013, passed by the Court of learned Judicial Magistrate First Class, Kharar in Complaint No. RT-70/2004, titled as ***Municipal Council, Kharar vs. Jai Kishan Filling Station (Petrol Pump), Mundi Kharar***, filed under Section 195-A of the Punjab Municipal Act, 1911 (*for short 'the Act, 1911'*), whereby the complaint was dismissed and the respondent/accused was acquitted of the charges as framed against it.

2. For the sake of coherence and continuity, the parties shall be

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referred to hereinafter as per their nomenclature give before the learned trial Court.

3. Briefly stated, the case of the complainant was that the accused/respondent, which is a petrol pump, had started raising construction of one more petrol pump near its already existing building, without seeking any prior permission from the complainant and without getting the site plan approved. Notice was issued to the accused to demolish the construction but in vain, thereby compelling the complainant to file the aforementioned complaint. On presentation of the complaint before the learned trial Magistrate, process was issued. The accused caused appearance through its authorized person and was admitted to bail. Notice under Section 195-A of the Act, 1911 was served upon him, to which, he pleaded not guilty and claimed trial.

4. To substantiate its case, the complainant examined two witnesses namely CW-1 Roshan Lal, Clerk and CW-2 Indermohan Singh, Junior Engineer, as CW-2, besides placing reliance on certain documents and thereafter, the evidence of the complainant was closed.

5. Statement of the accused under Section 313 of Cr.P.C. was recorded, wherein false implication was pleaded. However, no evidence in defence was adduced.

6. On appraising the evidence produced on record and considering the contentions as raised by both the sides, the learned trial Court observed that the complainant had failed to prove its case against the accused beyond reasonable doubt and while extending benefit of doubt, acquitted the accused and dismissed the complaint.

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7. Feeling aggrieved, the present application has been filed by the applicant-complainant seeking grant of leave to file and pursue an appeal against the aforesaid judgment of acquittal.

8. It has been argued by learned counsel for the applicant/complainant that the impugned judgment is liable to be set aside as the findings given by learned trial Court are perverse and not sustainable in the eyes of law. The learned trial Court did not apply its judicious mind. A non-speaking order had been passed. The fact that there was overwhelming evidence on record to prove the allegations as levelled against the accused had not been properly appreciated. With these broad submissions, it is argued that the impugned judgment is liable to be set aside, the application deserves to be allowed and the applicant-complainant deserves to be extended leave to file and pursue the appeal as against the accused/respondent.

9. *Per contra*, learned counsel for the respondent-accused has argued that the findings given by the learned trial Court are well reasoned and no ground has been made out to interfere with the same. Therefore, it has been urged that the application is liable to be dismissed.

10. I have heard learned counsel for the parties at considerable length and have gone through the material placed on record carefully.

11. Since challenge is to the judgment of acquittal passed by the learned trial Court, therefore, before proceeding further and adverting to the arguments raised by learned counsel for the parties, it would be useful to review the approach to be adopted while deciding the appeal against acquittal by the trial Court. In ***Chandrappa and others v. State of***

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Karnataka : (2007) 4 SCC 415, the Hon'ble Apex Court had observed that it could not be forgotten that in case of acquittal, there is a 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 should be presumed to be innocent unless he is proved to be guilty by a competent Court of Law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court. In ***Atley v. State of U.P. : AIR 1955 SC 807***, the approach of the Appellate Court while considering a judgment of acquittal was discussed and it was observed that unless the Appellate Court comes to the conclusion that the judgment of acquittal was perverse, it should not set aside the same. In ***Aher Raja Khima v. State of Saurashtra : AIR 1956 SC 217***, it was observed that for the High Court to take a different view on the evidence “there must also be substantial and compelling reasons for holding that the trial Court was wrong”. In ***Ramesh Babulal Doshi v. State of Gujarat : 1996 SCC (CrL) 972***, the Hon'ble Apex Court while speaking about the approach of the Appellate Court while considering an appeal against the order of acquittal of accused observed that while speaking in judgment over acquittal, the First Appellate Court is required to seek an answer to the question whether the findings of the trial Court are culpably wrong, manifestly erroneous and demonstrably unsustainable. If the Appellate Court answers the above questions in the negative, the order of acquittal should not be disturbed. In ***Chandrappa's case*** (Supra), the Apex Court after referring to a catena of judgments, culled out the following general principles regarding the powers of the Appellate

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Court while dealing with an appeal against an order of acquittal in the following words:-

- i) An Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.
- ii) The Code of Criminal Procedure puts no limitation, restriction or condition on exercise of such power and Appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and law.
- iii) An Appellate Court, must bear in mind that in case of acquittal, there is double presumption in favour of the accused.
- iv) 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.

12. In view of the above discussed position of law, it is to be seen as to whether the applicant-complainant deserves to be granted leave to file and pursue the appeal against the judgment of acquittal passed by the learned trial Court.

13. The aforementioned complaint had been filed by the applicant-complainant against the respondent-accused under Section 195-A of the Act, 1911. As per Section 189 of this Act, no person is entitled to erect or re-erect or commence to erect or re-erect any building within the area of Municipal Council without the sanction of the Municipal Committee. Then as per Section 195-A of this Act, any person who starts erecting or re-erecting any building without sanction, the Committee may issue notice to such person to require the building to be altered or demolished and on failure of such

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person to do so, the penalty might be imposed upon such person.

14. In the instant case, the allegations against the accused, which is a petrol pump, are that without getting any site plan approved, construction of a building with already erected building had been started by it. The onus was on the complainant to prove that any illegal construction/erection was raised by the accused upon any particular piece of property and such property was situated within its jurisdiction. To discharge this onus, the complainant had examined two witnesses. On a perusal of the statements of both these witnesses from the trial Court's record, it is, however, revealed that their statements could not be considered to be sufficient to prove the allegations so levelled. CW-1 Roshan Lal, Clerk of the complainant-council deposed that the accused had raised construction near its petrol pump without getting any site plan sanctioned and a notice was served upon it. However, neither this witness stated anything about the fact nor any other material had been placed on record to show as to what was the nature of that construction. Even the particulars of the piece of land/property, over which, such construction was raised had been mentioned nor any rough site plan of the said property had not been produced in evidence by the complainant. CW-1 even admitted that he had not seen any document of ownership of the area, where the petrol pump of the accused was situated and where the alleged construction was raised. He was not aware about the fact that when alleged construction had started or when it had ended. He could not even tell as to who was raising that construction. He admitted that no notice under Section 195-A of the Act, 1911 had been issued by the complainant. On

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overall assessment of testimony of this witness, it clearly emerges that he was neither aware about any construction allegedly raised by the accused nor about the area of land, wherein such construction was raised nor about the fact that such construction was raised by the accused and nobody else. The testimony of CW-2 Indermohan Singh is also totally formal in nature as he simply produced on record Ex. PW2/B, copy of report given by the Junior Engineer of the complainant on 23.10.2002, and report Ex. PW2/A. Though he admitted that report Ex. PW2/A had been made by the Junior Engineer of the Municipal Council namely Mr. Karwal, however, neither said Mr. Karwal had been examined nor his name had been mentioned in the list of witnesses. The burden lied heavily upon the complainant to prove that the accused had in fact raised any construction over any piece of land abutting it petrol pump or said construction was illegal. The evidence so produced on record was not at all sufficient to prove so. The learned trial Court, after appraising the entire evidence produced before it and on considering all the aspects of the case, had passed a well reasoned order, thereby holding that the complainant had failed to bring evidence of such nature on record which could be considered to be sufficient to bring home the guilt of the accused and had acquitted it of the charges framed against it.

15. In view of the discussion as made above, I am of the considered opinion that the applicant/complainant has failed to establish any convincing reason for this Court to form an opinion that there was any manifest illegality, perversity or the gross miscarriage of justice in the impugned judgment passed by the learned trial Court, thereby acquitting the

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respondent/accused from charges framed against it, for which, the interference of this Court is warranted by way of granting leave to file appeal against the same. Accordingly, the application, seeking leave to appeal, is hereby dismissed.

13.02.2025

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No