

CRM-A-593-2022 (O&M)

-1-

218 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-A-593-2022 (O&M)
Date of Decision: 10.01.2025

JITENDER KUMAR

...Applicant-Appellant

V/S

SAROJ DEVI AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manoj Tanwar, Advocate
for the applicant-appellant.

HARPREET SINGH BRAR J. (Oral)

1. The present application is preferred under Section 378(4) of the Cr.P.C. against the judgment of acquittal dated 05.04.2022 passed by learned Judicial Magistrate Ist Class, Kanina in criminal complaint No. 151 of 2016 filed under Sections 419, 420, 181, 467, 468, 471 and 120-B of Indian Penal Code.

2. In brief, the facts of the complaint are that complainant is resident of village Bewal, Tehsil Kanina, District Mahendergarh. The elections for the post of panch for gram panchayat were completed in January, 2016 and complainant had filed nomination for Ward No.8. Wife of complainant Renu Devi also filed nomination for the post of panch of Ward No.8. As per complainant, when the nominations were filled along-with with application, an affidavit is required to be filed stating therein that there is no criminal case pending against the applicant and the applicant has never been convicted by any criminal court. Accused No.1-respondent No.



CRM-A-593-2022 (O&M)

-2-

1 also filed a nomination for the post of panch in Ward No.8 and together with the application, she had given the same affidavit. Respondent No. 1 was elected as panch for Ward No. 8. As per complainant, a false affidavit was submitted by her. Due to filing of this false affidavit, wife of complainant was defeated in the elections. Had that false affidavit was not filed, the wife of complainant would have won the election. Complainant suffered great loss due to filing of false affidavit by respondent No.1. Against respondent No.1, one criminal case No.45/2013 dated 04.04.2013/12.01.2015 titled as '*Jitender Kumar Vs Anand & etc*', was pending in the court of Sh. Dharmapal, learned JMIC, Mahendergarh. Accused-respondents No.1 and 2 were convicted by the court vide order dated 15.06.2016 and a punishment of one year and fine of Rs.1000/- each was imposed upon them. The case was pending against them since 2013, however, despite knowledge a false affidavit was prepared and was submitted by respondents No. 1 and 2. In that behalf, application filed an application dated 28.06.2016 to Deputy Commissioner, Mahendergarh upon which the Deputy Commissioner forwarded the complainant to DDPO, Narnaul for necessary action. Complainant requested DDPO, Narnaul for taking action against respondents, however, no action was taken. Complainant, thereafter moved an application dated 08.08.2016 to CM Window, Narnaul. Application dated 09.08.2016 to Deputy Commissioner Narnaul and an application dated 01.09.2016 to Superintendent of Police, Narnaul and sought that necessary action be taken against accused, however, no action has been taken. As per complainant, accused-



respondents have committed the offences punishable under Sections 419, 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860. As per complainant, no action has been taken against respondents and hence this complaint has been filed.

3. Having heard the learned counsel for the applicant and after perusing the record of the case with his able assistance, it transpires that learned Court below has opined that perusal of Section 195(1)(a)(i) of Cr.P.C. would reveal that there is a complete bar for the Court below to take cognizance of any offence punishable under Section 181 of Indian Penal Code except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate and in the present case, complainant Jitender Kumar son of Lal Chand is a private individual and not a public servant before whom allegedly false affidavit was filed by accused-respondents. No public servant before whom such alleged false affidavit was filed, had moved any complaint in the present Case. Consequently, there was complete bar on the Court below to take cognizance of the said complaint filed by the complainant. Thus, learned Court below rightly acquitted the respondents.

4. 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



CRM-A-593-2022 (O&M)

-4-

witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. The reliance is placed on the judgment of Hon'ble Supreme Court passed in **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.

5. In view of the facts and circumstances of the case, this Court finds that learned counsel for the applicant-appellant has failed to point out any perversity or illegality in findings recorded by the learned trial 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.

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

(HARPREET SINGH BRAR)
JUDGE

10.01.2025
Ajay Goswami

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