

CRM-A-2153-2019 (O&M)

-1-

**226 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH**

CRM-A-2153-2019 (O&M)

Date of Decision: 09.01.2025

UNION OF INDIA THROUGH ATTAR SINGH

...Applicant-Appellant

V/S

GOBINDA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Premjit Singh Hundal, 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 26.02.2019 passed by learned Special Railway Magistrate, Jalandhar in criminal complaint No. 02 dated 26.09.2017 filed under Section 03 of RP(UP) Act RPF Post Nakodar.
2. The brief facts of the case of the prosecution are that on 25.09.2017 a memo No.031/SS/SQR/2017 dated 25.09.2017 was received wherein it had been mentioned that 5 Excel Face Cover Plate of Food Grain Load of Brake Van No.ESR 86/0-94715 were missing and after investigation it come to light that on 23.09.2017 one empty rack reached at Line No.3 at Sultanpur at about 11:30 hours. On 25.09.2017 after loading the said rack, the driver and loco pilot checked the rack and found that 05 Excel Face Cover Plate were missing. Intimation in this regard was given to both the on duty station masters. Thereafter said brake van was disconnected from other racks and left at line no.3. On the said memo

**CRM-A-2153-2019 (O&M)****-2-**

investigation was conducted and spot inspection was carried out. On 03.12.2017 Gobinda (respondent herein) was caught red handedly while committing theft of railway property at K.M.No.44/9 to 45/0. During the investigation of the said case, accused-respondent Gobinda suffered disclosure statement that about 2 to 2-1/4 months ago he has committed theft of 5 Excel Face Cover Plates, which were taken into police possession. Spot was inspected by the investigating officer and statements of witnesses were recorded. On completion of necessary formalities the complaint against accused-respondent Gobinda was presented before the Court.

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 it was proved that initially the case No. 04/2017 dated 04.12.2017 under Section 3 of RP(UP) Act RPF Post Nakodar was registered against the accused-respondent regarding theft of pendrol clips and recovery in the present case allegedly effected from the accused while in police custody, but no independent witness was joined during the said recovery. If the recovery had been effected while the accused was in custody in theft case, then the alleged recovery of the present case could have been shown in the same case, but the inquiry officer adopted the illegal method and registered another case regarding the alleged recovery effected from the accused while the accused was in police custody in other case No. 04/2017 dated 04.12.2017 under Section 3 of the RP(UP) Act RPF Post Nakodar and this fact caused dent in the prosecution story and the contention made by learned defence counsel was found to be



tenable. Moreover, the prosecution has not examined the Station Master Sultanpur Lodhi, who issued the theft memo Ex. PW-1/w, which is the basis of the case. Thus, it was rightly concluded that prosecution had failed to prove its case against the accused-respondent beyond the shadow of reasonable doubt and the respondent was rightly acquitted of the charges levelled against him.

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 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.

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.

09.01.2025
Ajay Goswami

(HARPREET SINGH BRAR)

JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No