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

**CRR-1734-2024 (O&M)
DECIDED ON: 05.02.2025**

BHAG MAL (DECEASED) THROUGH LRSPETITIONER

VERSUS

MEENA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH.

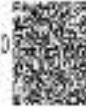
Present: Mr. Sandeep Arora, Advocate,
for the petitioner.

SANJAY VASHISTH, J (ORAL)

1. Present revision petition has been filed by the petitioner, by challenging the judgment of acquittal dated 06.06.2018, whereby the Court of learned Chief Judicial Magistrate (NRI cases), Jalandhar, found respondent Nos.1 and 2 innocent, after he being charged under Sections 420 and 120-B of IPC, in case FIR No.265 dated 31.10.2015, registered at Police Station Rama Mandi, District Jalandhar.

2. Findings recorded in paragraph No.25 of the judgment passed by learned trial Court, is reproduced as under:-

“25. So, the evidence produced on record by the prosecution is neither material nor sufficient to establish the guilt of accused beyond the shadow of reasonable doubt. The point of determination stands decided in favour of accused and giving the benefit of doubt accused Meena and Sunil Kumar are acquitted from the charges framed against them. Their bail Bonds and surety bonds stand discharged. The case property, if any be disposed of as per rules after

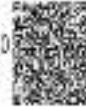


waiting the result of appeal, if any. File be consigned to the judicial record room Jalandhar.”

3. The judgment of acquittal was assailed by the complainant in appeal, and again, vide judgment dated 14.05.2024, appeal filed by the complainant namely Bhag Mal (petitioner herein), was dismissed by observing as under:-

“7. As rightly pointed out by the Id. Trial court another part of alleged guilt of the respondents/accused is that they did not hand over the children to the complainant even after surrogacy, but from perusal of Para No.5 of agreement Ex.PX1/A which reads, "after completion of pregnancy period, the first party shall give the baby born to her with the sperm of the second party, to the second party without any hesitation after the test of DNA". In this regard Kulwinder Kumar himself was at fault because he never tried to get his DNA test conducted and during his cross examination, he gave the statement on 12.03.2018 that he is not ready to give any DNA sample nor he want to file any reply to the application filed by the respondents/accused for getting his DNA test conducted. If Kulwinder Kumar was not at fault and the respondents/accused committed fraud with him by not using his sperms, from the IVF then he should be the first one to get his DNA test conducted, so that it can be ascertained that the children born to Meena did not belong to him. The refusal of Kulwinder Kumar to under go DNA test for the purpose of ascertaining the paternity of the children makes himself clearly liable for rescinding the contract Ex.PX1/A.

“8. As a result of foregoing discussion, it is held that the appellant has failed to prove his case against the respondents beyond shadow of reasonable doubt. Id. Trial court has properly appreciated the evidence in accordance with law and has rightly acquitted the respondents. Impugned judgment of Id trial court is not illegal or perverse and as such, is not required to be interfered with in the present appeal. So, the present appeal being without any merit is hereby dismissed. Trial court file be sent back along with copy of this judgment. Present appeal file be consigned to record room.”



4. As per the settled proposition of law, each and every accused, *qua* whom proceedings are there before the Court, has to be presumed innocent, until proved guilty, beyond the shadow of doubt. If this principle of law is applied in the cases, where the accused has already been acquitted by the Court of law, after following the required procedure under the law, presumption of innocence would be double, while dealing with the appeal against acquittal.

Several times, it has also been held by the Apex Court that in the appeals against acquittal, at the stage of decision, if two different views are possible to be framed, one which favours the accused, has to be followed.

5. In the judgment passed by Hon'ble the Apex Court in ***Chandrappa and others vs. State of Karnataka, 2007(2) RCR (Criminal) 92 : Law Finder Doc Id #125892***, held as under:-

*“**14.** Bare reading of Section 378 of the present Code (Appeal in case of acquittal) quoted above, makes it clear that no restrictions have been imposed by the Legislature on the powers of the appellate Court in dealing with appeals against acquittal. When such an appeal is filed, the High Court has full power to reappreciate, review and reconsider the evidence at large, the material on which the order of acquittal is founded and to reach its own conclusions on such evidence. Both questions of fact and of law are open to determination by the High Court in an appeal against an order of acquittal.*

***15.** It cannot, however, be forgotten that in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence 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*



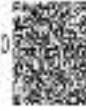
reinforced, reaffirmed and strengthened by the trial Court.

16. TO 33. *XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX*

34. *Recently, in Kallu v. State of M.P., 2006 (1) RCR (Criminal) 427 (SC) : 2006(1) Apex Criminal 135 (SC) : (2006) 10 SCC 313, this Court stated; "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". (emphasis supplied)*

35. *From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;*

- (1) An appellate Court has full power to review, reapprciate and reconsider the evidence upon which the order of acquittal is founded;*
- (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;*
- (3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.*
- (4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption*



in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

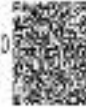
(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

36. XX

37-38. *In our view, if in the light of above circumstances, the trial Court felt that the accused could get benefit of doubt, the said view cannot be held to be illegal, improper or contrary to law. Hence, even though we are of the opinion that in an appeal against acquittal, powers of appellate Court are as wide as that of the trial Court and it can review, reappraise and reconsider the entire evidence brought on record by the parties and can come to its own conclusion on fact as well as on law, in the present case, the view taken by the trial court for acquitting the accused was possible and plausible. On the basis of evidence, therefore, at the most, it can be said that the other view was equally possible. But it is well-established that if two views are possible on the basis of evidence on record and one favourable to the accused has been taken by the trial Court, it ought not to be disturbed by the appellate Court. In this case, a possible view on the evidence of prosecution had been taken by the trial Court which ought not to have been disturbed by the appellate Court. The decision of the appellate Court (High Court), therefore, is liable to be set aside.”*

6. The view taken by Hon’ble Apex Court in **Chandrappa and others (supra)** was later on followed in the case of ***State of Maharashtra vs. Fazal Rehman Abdul, 2014 (7) SCC (Cri) 1, Law Finder Doc Id #419565***. Paragraph No.9 of the said judgment, says as under:-

“9. This Court has laid down parameters for interference against the order of acquittal time and again. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to



whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality."

7. Present petition is a revision petition, whereby the complainant has challenged the judgment passed in an appeal against acquittal of respondent-accused, whereby the judgment of acquittal passed by learned trial Court (Court of learned Magistrate) has been maintained.

The two Courts below have found respondent Nos.1 and 2 innocent and also counsel for the petitioner – complainant is unable to point out any illegality or perversity done by the Courts below, while evaluating the evidence. This Court in the circumstances, as in the present case, on this account views that the presumption of innocence goes on higher scale, than the concept of double presumption, as has been held by Hon'ble Apex Court in its judgments (supra).

8. In view of the law laid down by Hon'ble the Apex Court, having been discussed here above, and also there being no perversity



pointed out by the counsel for the petitioner, this Court finds no substance in the present revision petition, and same is hereby **dismissed**.

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

05.02.2025
Lavisha

(SANJAY VASHISTH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>