

(2013) 07 P&H CK 0837

High Court Of Punjab And Haryana At Chandigarh**Case No:** CRM-A No. 957 MA of 2011 (O and M)

Prem Chand

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision: July 31, 2013**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 378(4)
- Penal Code, 1860 (IPC) - Section 323, 380

Hon'ble Judges: Jitendra Chauhan, J**Bench:** Single Bench**Advocate:** Gaurav Mohunta, for the Appellant; Deepak Jindal, DAG, Haryana and Party-in-Person, for the Respondent

Judgement

Jitendra Chauhan, J.

The present petition, u/s 378(4) of the Code of Criminal Procedure, has been filed against the judgment dated 3.3.2011, passed by the learned Additional Sessions Judge, Karnal, whereby the appeal filed by the applicant against the judgment dated 10.11.2009, passed by the learned Judicial Magistrate, 1st Class, Karnal, vide which, respondent No. 2 was acquitted of the charge in case FIR No. 194 dated 21.5.1999, registered under Sections 380, 323 of the Indian Penal Code, was dismissed. The case was registered on the complaint made by Prem Chand and Anuj Kumar. They being the owners of M/s. Prem Chand Rice Company were running their business in the hired rice mill working under the name and style of Ganga Rice Mill. On 20.5.1999 at about 11 P.M. while Prem Chand was sleeping in the godown, accused Shankar Dayal, who was already known to him, asked him to open the gate. Accused Shankar sought permission for parking a tractor-trolley bearing No. 6877 in his godown. In the meantime, two persons, one of them was working with M/s. Baldev Singh Jagtar Singh, came with the tractor trolley. Three other persons also reached there. The complainant immediately rang up his house and asked his father to reach the spot as he was sensing something fishy. In the meantime, trespassers snatched

telephone from him and plugged out it's cable. Thereafter, they started beating him and kept a gun on his chest. In the meantime, his father reached the spot, who was also manhandled. They locked up the chowkidar in a separate room and they also locked up complainant and his father in the office room. Thereafter, they all loaded 860 bags of Basmati rice in the tractor trolley and fled away at about 4 A.M. After completion of investigation and recording the statements of the witnesses, the challan was presented.

2. The accused were charged under Sections 380 and 323 of IPC, to which they did not plead guilty and claimed trial.

3. In order to bring home guilt against the accused, the prosecution examined only one witness ASI Karta Ram, the investigating Officer and closed its evidence.

4. When examined u/s 313 Cr. P.C., the accused persons denied all the incriminating circumstances appearing in the prosecution evidence and pleaded innocence and false implication.

5. After analysing the evidence led by the parties and hearing the learned counsel for the parties, the learned trial Court acquitted the accused by observing that since no eye witness of the incident has been examined and the Investigating Officer has also not explained as to on what basis complainant identified the rice bags, picked up from the godown of the accused, as his own looted rice bags. It has further been observed that neither the complainant Prem Chand, nor his son Anuj Kumar, nor the alleged Chowkidar has been examined to prove the case of the prosecution.

6. Feeling dissatisfied with the same, the complainant filed a criminal revision before the learned Additional Sessions Judge, which was also dismissed vide judgment dated 3.3.2011.

7. The Complainant has filed this petition u/s 378(4) Cr. P.C., seeking leave to appeal.

8. Learned counsel for the appellant submits that the learned courts below have committed a grave error while acquitting the accused-respondent No. 2. He further submits that the respondent No. 2 had to take sum of Rs. 8 lacs from the appellant, and in lieu of that, the said respondent loaded the rice in the trolley and settled the accounts with the complainant. He looted 860 bags of basmati rice from the godown. His own admission is sufficient to convict him.

9. On the other hand, respondent No. 2 states that stock of the godown was checked and it was found as per the stock registered. There was no deficiency in the record and the stock. The appellant only to harass him filed the complaint.

10. Heard and perused.

11. In [Dr. Sunil Kumar Sambhudayal Gupta and Others Vs. State of Maharashtra](#), the Apex Court framed the guidelines for appellate court as to how to deal with in the matter of "appeal against acquittal", which are as under:-

Appeal against Acquittal:

22. It is a well-established principle of law, consistently reiterated and followed by this Court is that while dealing with a judgment of acquittal, an appellate court must 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. Even though the appellate court is entitled to consider, whether in arriving at a finding of fact, the trial Court had placed the burden of proof incorrectly or failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law; 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. The trial court which has the benefit of watching the demeanor of the witnesses is the best judge of the credibility of the witnesses.

23. Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India. The nature of the offence, its seriousness and gravity has to be taken into consideration. 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 with the decision of the Trial Court in a casual or cavalier manner where the other view is possible should be avoided, unless there are good reasons for such interference.

24. 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 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. A 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. (See: [Balak Ram Vs. State of U.P.](#), [Shailendra Pratap and Another Vs. State of Uttar Pradesh](#), ; [Budh Singh and Others Vs. State of U.P.](#), ; [S. Rama Krishna Vs. S. Rami Reddy \(D\) by his LRs. and Others](#), [Arulvelu and Another Vs. State represented by the Public Prosecutor and Another](#), [Ram Singh @ Chhaju Vs. State of Himachal Pradesh](#), ; and [Babu Vs. State of Kerala](#),

12. From the perusal of the impugned judgments, it emerges that the appellant is misusing the process of law only just to harass the respondent No. 2. During trial petitioner and his son evaded service and they were not examined. Moreover, when the investigation of this case was conducted, his stock register was checked, it was found that he was not having the requisite stock of rice in his books as he was also not found in possession of 860 bags of Basmati rice, which were alleged to be stolen by respondent-accused. However, the appellant has also played a fraud with the

Court by concealing the order dated 26.10.2005, passed by this Court and obtained superdari of the case property from the court and thereafter, he filed a revision before the Sessions Judge, Karnal for directing the trial Court to implement the earlier orders of selling the case property. However, the orders could not be implemented as the complainant offered tempered case property, for which, a criminal case was registered against the appellant, in which, he is facing the trial.

13. This Court finds no perversity or illegality in the impugned judgments passed by the courts below. The appellant had committed a fraud with the court and also harassed the respondent No. 2 by making false complaint against him. In view of the above, the present application for leave to appeal is hereby dismissed being devoid of any merit with cost of Rs. One Lac, which shall be deposited with the Haryana State Legal Services Authority. As the main appeal has since been dismissed, therefore, the delay application is also dismissed.