

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

CRR-1065-2016

Date of decision:-13.3.2018

Smt.Chand Tari

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.S.P. Chahar, Advocate
for the petitioner.

Mr.Gaurav Bansal, AAG, Haryana.

Mr.Dinesh Arora, Advocate
for respondents No.2 to 7.

H.S. MADAAN, J.

Mahender Singh, Ram Dia, Samay, Banwari, Rajender and Om, all of them being accused in FIR No.142 dated 24.12.2004 for the offences under Sections 420, 468 and 471 IPC, registered with Police Station Sadar, Gohana were tried by Judicial Magistrate Ist Class, Gohana, who vide judgment dated 9.3.2012 convicted them for offences under Sections 420 and 406 IPC and vide order of that very date they were sentenced as under:

Under Section	Sentence Awarded
420 IPC	Simple imprisonment for three years and to pay a fine of Rs.3,000/- each and in default thereof, to further undergo simple imprisonment for a period of three months each.
406 IPC	Simple imprisonment for three years and to pay a fine of Rs.2,000/- and in default thereof, to further undergo simple imprisonment for a period of three months each.

Both the sentences were ordered to run concurrently.

Briefly stated, the facts of the case as per prosecution story are that complainant – Chand Tari, Sarpanch of village Aanwali, Tehsil Gohana, District Sonapat submitted a written complaint to the police on 18.12.2004 contending therein that a temple of Devi Mata is situated in their village, which is being managed by Gram Panchayat, Aanwali; that accused had formed a fake society in the name of temple of Devi Mata representing themselves to be the office bearers of the said society and had been collecting funds from the people; that the complainant had lodged a complaint in that regard to Deputy Commissioner, Sonapat, who asked them to refrain from such activities; that accused Mahender Singh had filed a civil suit against Gram Panchayat, Aanwali, which was dismissed; that the appeal filed by accused against such judgment and decree was also dismissed; that despite that accused collected money from people at large. After registration of the formal FIR, the matter was investigated. Accused were arrested in this case. The record was taken into possession. Statements of witnesses were recorded. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Gohana, copies of documents relied upon in the challan were supplied to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Judicial Magistrate Ist Class, Gohana finding that charge for the offences under Sections 420 and 406 IPC was disclosed against the accused, charge-sheeted the accused for the said offences, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

To bring home guilt to the accused, the prosecution examined as many as six witnesses as per details below:

PW1 Bhanu son of Ratan Singh supported the case of prosecution regarding there being temple of Devi Mata in their village being managed by Gram Panchayat, adding that accused Mahender Singh had collected a sum of Rs.51/- from him issuing receipt Ex.PW1/A and subsequently he came to know that funds collected by the accused in the name of temple were being used by themselves only.

PW2 Sumer Singh showed his ignorance with regard to the facts of the case. He was declared a hostile witness and allowed to be cross-examined by the Public Prosecutor but without any effective result.

PW3 HC Sukhbir Singh, a witness of seizure memo Ex.PW3/A vide which receipt books Ex.P1 and Ex.P2 had been taken into possession by the Investigating officer from the accused on 4.4.2005 deposed in that regard.

PW4 Chand Tari, complainant deposed on oath the assertions

made in the written complaint submitted by her to the police.

PW5 SI Kila Singh deposed regarding his having registered formal FIR Ex.PW5/A on receipt of complaint Ex.PW4/A on 24.12.2004 and on 4.4.2005 taking into possession receipt books Ex.P1 and Ex.P2 from accused vide recovery memo Ex.PW3/A.

PW6 Satbir Singh, Record-keeper proved copy of judgment dated 4.9.2003 in civil suit No.399 of 1.10.2002 as Ex.PW6/A.

Since the prosecution failed to conclude its evidence despite availing ample opportunities, the same was closed by Court order.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case.

During defence evidence, the accused examined DW1 - Bani Singh, Ex-Sarpanch of Gram Panchayat village Aanwali, who functioned as such from the year 2003 to 2010, who stated that he did not have any accounts of the temple of Devi Mata at any point of time and the temple was being managed by the accused.

DW2 – Raj Kumar, Secretary produced the record stating that since the year 2000 till date, the record of the temple was never remained with any Sarpanch.

After hearing arguments, learned Judicial Magistrate Ist Class, Gohana convicted and sentenced the accused as mentioned supra.

Feeling aggrieved, the accused preferred appeals against the judgment of conviction and order of sentence passed by the Judicial

Magistrate Ist Class, Gohana before the Court of learned Sessions Judge, Sonapat, which were assigned to learned Additional Sessions Judge, Sonapat, who vide judgment dated 29.9.2015 accepted the same and set aside the judgment of conviction and order of sentence passed by the trial Court and acquitted the accused of the charge framed against them.

Feeling dissatisfied, the complainant has filed the revision petition in this Court, notice of the same was issued to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Learned Additional Sessions Judge, Sonapat while accepting the appeals has given the following reasoning:

I have given thoughtful consideration to the rival submissions raised by the learned counsel for the parties. The prosecution has not produced any cogent evidence to prove that the temple was ever being managed by the Gram Panchayat prior to the registration of this case. On the other hand, DW1 Bani Singh, who remained Sarpanch of the Gram Panchayat for five years, has clearly stated that the temple was not being managed by the Gram Panchayat during his tenure and the temple was being managed by the accused Mahender. DW2 Raj Kumar, Secretary has also stated that the record of temple never remained with any Sarpanch. PW2 Sumer Singh has not supported the case of the prosecution and has stated that he does not know anything

about this case. No other villagers, except the complainant, has been examined by the prosecution to prove that the accused collected funds from the people on the basis mis-representation.

It is settled that in a criminal case, it is duty of the prosecution to prove the guilt of the accused beyond reasonable doubt and if there is any doubt in the case of prosecution, benefit of doubt should be given to the accused. In this case no villagers from the village has been examined to prove that the accused induced any person to deliver any property by way mis-representation. Therefore, it may be assumed that the villagers voluntarily gave money as donation for the temple to the accused as accused Mahender was managing the affairs of the temple. There is no evidence on the record to prove that the accused did not use the funds collected from the people in the management of the temple and mis-appropriated the same. In the considered opinion of this Court, the prosecution has not been able to prove the guilt of the accused beyond reasonable doubt and accused are entitled to benefit of doubt.

In view of my above discussion, both the appeals are allowed. Impugned judgment of conviction and order of sentence dated 9.3.2012 are set aside. Benefit of doubt is given to the accused and they are acquitted.

I find such reasoning to be quite convincing. There is no

reason to differ with the same. Whereas the judgment passed by learned trial Magistrate suffers from various infirmities and illegalities. Learned Magistrate in para No.10 of the judgment has observed that the prosecution has been able to prove charge against the accused beyond reasonable doubt, although investigation conducted is faulty. As per his own admission investigation was not up to the mark. He has wrongly observed that the prosecution has been able to prove charge against the accused beyond a shadow of reasonable doubt. Learned Magistrate has not given due importance to the evidence adduced by the accused in defence inasmuch as DW1 Bani Singh, Ex-Sarpanch of the village has categorically stated that the temple was being managed by the accused and Gram Panchayat did not have any accounts of income and expenditure of temple of Devi Mata. DW2 Raj Kumar, Secretary, who had produced the record had categorically stated that from the year 2000 till date record of temple never remained with any Sarpanch. The statements of defence witnesses are at par with those of prosecution witnesses and entitled to given due weightage unless there is some reason to view those depositions with suspicion.

Furthermore, merely by recovery of receipt books Ex.P1 and Ex.P2, it cannot be presumed that accused had been collecting money from the people at large making misrepresentations or they had committed criminal breach of trust with respect to that money or committing any cheating. Only one person (PW1 Bhanu) had come forward to state that accused Mahender Singh had received Rs.51/- from him issuing a receipt, through in his cross-examination, he stated that he

had given money voluntarily. Thus necessary ingredients of offences under Sections 406 and 420 IPC were not fulfilled and the trial Magistrate had wrongly convicted and sentenced the accused for the said offences, which wrong has been undone by learned Additional Sessions Judge, Sonapat.

I do not find any illegality and irregularity in the judgment passed by the learned Additional Sessions Judge, Sonapat sitting as Appellate Court. Rather it is based upon proper appraisal and appreciation of evidence and correct interpretation of law. It can certainly be not termed as perverse or having been passed against settled principles of criminal law. There is no error apparent on the face of it. The law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in the matter is possible, no inference with such judgment is to be done.

Finding no merits in the petition, the same stands dismissed.

13.3.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No