THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRIMINAL APPEAL No.1420 of 2004

JUDGMENT:

This appeal is preferred by the State questioning the judgment dt.28-01-2003 in C.C.No.284 of 1999 of the Judicial Magistrate of First Class, Dhone acquitting the respondents of offences committed under Sections 468, 471, 477, 420 and 120-B IPC.

2. According to the prosecution, A-1 to A-20 were residents of Bethamcherla doing business in slabs and chips and that they evaded commercial tax to the State exchequer to the tune of Rs.10 lakhs influencing A-21 to A-23 with forged duplicate waybills. The Inspector of Police, office of Regional Vigilance and Enforcement Cell, Kurnool came to know about the evasion of taxes by A-1 to A-20 in Bethamcherla and then collected incriminating material from the possession of A-1 to A-20 as well as from the office of the Dy.Commercial Tax Officer, Bethamcherla. Their investigation revealed that A-1 to A-20 being traders in napa slabs shifted such slabs to various places by using duplicate waybills with material alteration as if signed by Commercial Tax Officer and submitted their assessment to the Commercial Tax Office at Bethamcherla, and A-21 to A-23 being public servants,

made assessments without verifying the original extracts.

3. At the outset, the learned Public Prosecutor stated that

A-21 to A-23 were public servants and no sanction under Section 197 Cr.P.C. was obtained and therefore, he is not pressing the appeal as regards A-21 to 23.

4. Coming to A-1 to A-20, he contended that the Court below erred in acquitting them; that waybills were to be submitted in triplicate; one of which has to be given to the Commercial Tax Officials by the accused; and in the copy which given to the Commercial Tax Department officials by A-1 to A-20, they have wrongly mentioned the material transported as “mosaic chips” instead of “napa slabs” and since rate of sales tax for such chips is less than the rate of tax applicable for napa slabs, they paid lesser taxes to the State Government. He further contended that when the original and duplicate copies correctly mentioned that the material transported was “napa slabs”, mention in the triplicate copy by accused of the material transported as “mosaic chips” amounts to committing of offence under Sections 468 and 471 IPC. He also contended that A-1 to A-20 can be said to have committed the offence of forgery by making a false document. He placed reliance on the judgments of Supreme Court in **Mohammed Ibrahim and others Vs. State of Bihar and another**[1] and **Parminder Kaur Vs.**

State of Uttar Pradesh and another[2]. He therefore contended that the Court below ought not to have acquitted the accused of the offences mentioned above.

5. He also contended that it is also possible to hold that the accused had committed criminal breach of trust and are liable to be punished under Section 409 IPC. In addition, he also placed reliance on Section 199 IPC, and contended that in view of Section 222(2) Cr.P.C, it is open to the Court to convict the accused for the lesser offences mentioned in section 199 IPC if it is of the opinion that Sections 468, 471, 477 and 420 r/w 120-B IPC are not attracted.

6. The learned counsel for respondent Nos.1, 3, 4, 7, 9, 10, 12, 13, 15, 18 and 19 Sri K.Raghu Veer contended that the prosecution had not explained the circumstances, the time and from which place the evidence being relied upon by it were seized; there was conflicting evidence in the testimony of P.Ws.1 and 8 regarding seizure of record; while P.W.8 claimed that enquiry was ordered under which entire record was seized from the Dy.Commercial Tax Office, there is no evidence to prove that any enquiry was said to have been caused by P.W.8. He further sought to point out that P.Ws.4 and 5 panch witnesses had stated that they were summoned to Bethamcherla Police Station and made to sign the panchanama

Ex.P-18 on 07-12-1997 and this has created a serious doubt as to how the incriminating material was procured by prosecution. He pointed out that P.W.9, the investigating officer, had stated that a Constable of the Vigilance Department came and deposited bunch of papers in the police station, but there is no such evidence on record to substantiate this allegation; that accused had disputed about the time and place of seizure of records; and P.Ws.9 and 10, the investigating officers, did not offer any explanation for the delay in submitting bunch of record in the Court during recording of evidence of P.W.1 in 2002.

7. The learned counsel for other respondents S r i T.Kumar Babu and others adopted the above submissions, and all the counsel for respondents contended that the Court below had given cogent reasons for acquitting the accused and there is no warrant for interference with the findings of the Court below.

8. I have noted the submissions of both sides.

9. Before I deal with the contentions, I will briefly state the conclusions of the Court below. The Court below found that the offence under Sections 468, 471 and 477 IPC were not established by prosecution against the accused since making of false statement in a document would not come within the purview of “forgery” and that it might at best amount to making false statement and would

not amount to making a false document. It held that the prosecution's case was not that the accused traders forged the signatures of the concerned officials on the triplicate form in Exs.P-1 to P-17; therefore mere making of a false statement regarding the nature of the goods would not bring it within Section 464 IPC and cannot be said to amount to forgery. It also held that there was no direct evidence on record to involve A-1 to A-23 under Section 120-B IPC since the evidence on record did not prove the conspiracy between them. It held that the staff of A-21 to A-23 were not examined to show that they had placed original waybills submitted by A-1 to A-20 for verification before
A-21 to A-23, but yet A-21 to A-23 accepted the returns submitted by A-1 to A-20 without verifying the original waybills. It held that the evidence on record did not establish the commission of offence under sections 468 and 120-B IPC by accused; the accused cannot be convicted for the knowledge or reason to believe about the alleged forged documents; and they cannot be convicted for the offence under sections 471, 477 and 420 IPC. It also held that the prosecution has not explained the circumstances, the time and from which place the incriminating documents were seized and the evidence of P.Ws.1 and 8 in this regard was conflicting.

10. A reading of the charge sheet framed

against the accused indicated that A-1 to A-20 were involved in the business of extracting napa slabs from Government land under mining leases; they were supplied sales tax books and were expected to collect sales tax from the buyers when they sold or sent material; that it was obligatory on their part to issue waybills in triplicate; one to the consignee, duplicate waybill to the carrier and the triplicate to be kept with the accused; in the inspection done by the complainant, it was found that the accused had filed before Commercial Tax officials triplicate of waybill mentioning goods transported as 'mosaic chips' and paying lesser sales tax thereon; that the accused also prepared duplicate waybills and seals for using them in transporting the material and using them as genuine one. However, no evidence had been led by the prosecution to establish the charge that the accused had prepared duplicate waybills and seals for using them in transporting the material as genuine ones.

11. Moreover, while the charge sheet states that during the course of investigation, the Inspector, Vigilance and Enforcement Department had seized some incriminating material from the possession of accused, P.W.9, one of the investigating officers, in his cross-examination stated that he had not seized any record directly from A-1 to A-20 and P.W.8 produced the documents before him. P.W.8, on the other hand deposed that an enquiry had been ordered under which

the entire record was seized from the Deputy Commercial Tax Office, but no evidence, to prove such alleged enquiry said to have been caused by P.W.8, was produced by prosecution. Thus, in my opinion, the Court below had rightly concluded that the prosecution had not explained the circumstances, the time and from which place the incriminating material was seized. Also, P.Ws.4 and 5, who were said to be the panchayatdars for the panchanama Ex.P-18 dt.07-12-1997 stated that they were summoned to the police station of Bethamcherla and were made to sign on papers therein. Their evidence seems to suggest that certain specimen signatures of accused were obtained by police on some papers in their presence. But P.W.4 became hostile and stated that he did not know how many persons were brought to the said police station by police and that he had signed on Ex.P-18 at the instance of Inspector of Police, Banaganapalle without going through the contents therein. P.W.9 stated that a Constable of the Vigilance Department came and deposited a bunch of papers in the police station. But there is no evidence on record to substantiate this allegation. P.Ws.9 and 10, being the investigating officers, had not offered any explanation to the delay in submitting the record in Court during the evidence of P.W.1 in the year 2002. This assumes significance since the accused had been disputing the timings and place of seizure of all the records. Seizure of incriminating material by police should be done in conformity with Section 100(4) Cr.P.C. in the presence of two or more independent and respectable inhabitants of the locality which would ensure fairness. Non-compliance with Section 100(4) Cr.P.C., throws a serious doubt on the veracity of the prosecution evidence.

12. Apart from this infirmity relating to search and seizure, I am also of the opinion that the prosecution has failed to prove the guilt of accused with regard to commission of offence under Sections 468 and 471 IPC. Assuming for the sake of arguments that in triplicate of the waybill instead of mentioning "napa slabs", the accused did mention "mosaic chips", it would at best amount to making of false statement but cannot amount to making "false document" within the meaning of said term in Section 464 IPC to attract Sections 468 and 471 IPC.

13. This was clearly explained in **Mohammed Ibrahim** (1 supra). That was a case where it was alleged that a sale deed was executed by a person claiming to be the owner of property conveyed therein even though he was not the owner of the said property. The Court extracted Section 464 IPC and explained that the sale deeds executed by the appellant therein do not fall under the second and third categories of "false documents". It held that the claim of complainant that the execution of sale deeds by appellant, who was in no way connected

with the land, would not amount to forgery of documents and bring the case under first category either. It clarified that when a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorized by someone else, and therefore, the execution of such documents (purporting to convey some property of which he is not the owner) is not execution of a "false document" as defined under Section 464 of IPC. It held that if what is executed is not a false document, there is no forgery. So neither Section 467 nor Section 467 IPC are attracted.

14. Similar view has been expressed in **Shankerlal Vishwakarma Vs. State of Madhya Pradesh**[3]**, Motisinh Gambhirsinh Vs. The State**[4] **and A.K. Khosla and others Vs. T.S. Venkatesan and another**[5] which have been followed by the Court below.

15. In the present case also, it was held by trial Court that if the accused had made a document with "false recitals", it would only amount to making of a false statement in a document and would not come within Section 464 IPC and would not amount to forgery. If there is no forgery within the meaning of Section 464 IPC, then Sections 468 and 477 IPC are also not attracted. I agree with the said conclusion of the trial Court.

16. I am also of the opinion that Section 406 IPC is also not attracted since the offence of "criminal breach of trust" defined in Section 405 IPC which is punishable under Section 406 IPC can be said to occur only if there was an entrustment of property. In the present case, there was no such entrustment of property. Therefore, Section 406 IPC is not attracted.

17. Coming to Section 199 IPC, the said provision states:

> *"**199. False statement made in declaration which is by law receivable as evidence:-** Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to be object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence."*

18. For this provision to be attracted, it is necessary that the declaration referred to therein must be capable of being used as evidence and be such that <u>any public servant or other persons is bound or authorized by law to receive as evidence of any fact</u>. The learned Public Prosecutor has been unable to show any provision of law which suggests that the triplicate waybill was receivable as evidence by the Commercial Tax Department officials/A-21 to A-23. In this view of the matter, I am of the

opinion that even these provisions are not attracted.

19. The scope of interference by appellate Court with a judgment of acquittal passed by the Court below under Section 378 IPC is well settled in **Chandrappa and others Vs. State of Karnataka**[6]***,*** wherein the Supreme Court held:

> *"(1) An appellate court has full power to review, reappreciate 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 emphasise 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 is 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."*

20. The above principle was reiterated in **State of Rajasthan v. Mohan Lal**[7] and recently in **Satvir Singh v. State of Delhi**[8].

21. Having regard to the above legal position and in view of discussion supra, I am of the opinion that the prosecution has failed to prove that accused had committed the offences alleged against them in the charge sheet and that the Court below had rightly acquitted the accused. I therefore see no reason to interfere with the judgment of the Court below.

22. Therefore, the Criminal Appeal fails and it is accordingly dismissed.

23. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 29-01-2015
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[1] (2009) 8 SCC 751
[2] (2010) 1 SCC 322
[3] 1991 CRI.L.J. 2808
[4] AIR 1961 GUJARAT 117
[5] 1992 CRI.L.J. 1448
[6] (2007) 4 SCC 415
[7] (2009) 12 SCC 515
[8] (2014) 13 SCC 143