

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 609 OF 2013

Dindayal Co-operative Patsanstha, Pen .. Applicant

v/s.

M/s. Rajesh Enterprises & Anr. ..Respondents

Ms. Prabha Badadare a/w. Omkar Nagvekar i/b. M.K.Kocharekar for the Applicant.

Mr. P.H.Gaikwad Patil APP for the Respondent State.

Mr.Yogesh A. Mankavale for the Respondent Nos.2 and 3.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 14th AUGUST, 2017.**

P.C.

1. Heard. This is an application for leave to appeal against the judgment dated 29th October, 2013 , whereby the learned Magistrate acquitted the aforesaid respondents for offences under Section 417 and 420 of the Indian Penal Code.

2. The case of the applicant is that the respondent accused are engaged in business of sale of household articles. The respondent had put up a proposal before the applicant to advance loan to its

employees of Dimple Drums & Barrels for purchasing household articles from the shop of the respondent. It was agreed that the amount would be repaid by deducting the installments from the salary of the employees.

3. The appellant claims that it had advanced loan to the employees. It did not receive the installments towards the repayment of the loan, hence it made inquiries with the respondent. The applicant claims that the respondent had agreed to repay the loan amount. Since the respondent did not repay the loan amount, the applicant filed a private complaint for the offences under Section 417 and 420 of the Indian Penal Code.

4. The applicant adduced evidence in support of its case. The defence of the respondent was of total denial. The learned Trial Judge, after appreciating the evidence adduced by the applicant-complainant dismissed the complaint and acquitted the respondent accused mainly on the ground that the applicant had failed to prove that it had advanced any loan to the employees of Dimple Drums and Barrels. The learned Judge further held that there was no agreement between the applicant-complainant and the respondent

accused regarding the said loan transaction. There was also no agreement between the respondent and the employees of Dimple Drums and Barrels regarding the said loan transaction. The learned Judge has further held that the applicant has failed to prove that it had disbursed any loan amount to the employees of Dimple Drums and Barrels. It is further held that the respondents have denied having signed the acknowledgement letter/deeds at Exhibit 54 and 56, and that the applicant has not examined any witness to prove the said document.

5. In the light of the aforesaid observations, the learned Judge acquitted the respondents for offences under Section 417 ad 420 of the Indian Penal Code.

6. Heard Ms. Badadare, the learned Counsel for the applicant. Perused the impugned judgment as well as the notes of evidence.

7. In *Aruvelu & Anr. vs. State represented by the Public Prosecutor dt. 7th October, 2005*, the Apex Court has held as under:-

“39. In Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450, a two Judge Bench of this Court of which one of us

(Bhandari, J.) was a member had an occasion to deal with most of the cases referred in this judgment. This Court provided guidelines for the Appellate Court in dealing with the cases in which the trial courts have acquitted the accused. The following principles emerge from the cases above:

1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

40. This Court in a recently delivered judgment State of Rajasthan v. Naresh @ Ram Naresh 2009(11) SCALE 699 again examined judgments of this Court and laid down that "An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused. This Court has dealt with the scope of interference with an order of acquittal in a number of cases."

41. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very

slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law.”

8. In the instant case, the complainant has alleged that the respondent has mis-appropriated the amount which was sanctioned by way of loan to the employees of Dimple Drums and Barrrels. In this regard, no agreement was entered between the complainant and the employees of Dimple Drums and Barrels as regards the said loan transaction. There is no agreement between the Respondent and its employees as regards deduction on purchase of any goods and deduction of loan installment. There is also no agreement between the applicant and the respondent as regards repayment of loan by way of installment, from the salary of its employees. It is also to be noted that the complainant has alleged that the said loan amount was to be paid to the employees. The averments in the complaint itself indicate that it had not disbursed any loan amount to the

employees, on the contrary has come out with the case that it had paid the money to the respondent.

9. P.W.1 Dnyaneshwar Mhatre has admitted in the cross examination that the accused had not obtained the loan and was also not a guarantor to any loan transaction. Even otherwise, there is no material to show that the respondent had induced the applicant-complainant to advance the loan or that it had deceived the applicant by not repaying the loan amount. Inducement and deception being the essential ingredients of cheating, being not proved, the learned Judge was justified in acquitting the applicant. The finding of the learned Judge are based on the evidence on record and are neither illegal nor perverse. The order does not warrant interference. The application is dismissed.

(ANUJA PRABHUDESSAI, J.)