

Crl. O.P.No.320 of 2017 in

Crl.A.No.SR80 of 2017

M.VENUGOPAL, J.,

Heard both sides.

2. The Petitioner / Appellant / Complainant has filed the present Criminal Original Petition seeking 'Grant of Special Leave' under Section 378(4) of Cr.P.C., to prefer an Appeal as against the 'Judgment of Acquittal' passed in C.C.No.3605 of 2009 dated 20.10.2016 by the Learned Fast Track Court No.III, Saidapet.

3. The trial Court while passing the Impugned 'Judgment of Acquittal' in C.C.No.3605 of 2009 dated 20.10.2016 at Paragraph No.9 had interalia observed the following:

"... In this case the complainant never appeared for cross examination. The case was pending for more than one year for cross of P.W.1. On 26.02.2016 this Court passed a conditional order that the complainant should appear on 26.04.2016 for cross of P.W.1. Evenafter conditional order the complainant not appeared on 26.04.2016. Thereafter the complainant never took any steps to subject himself for cross of P.W.1, in the circumstances the court feels the case of the complainant is not a reliable one."

and consequently found the Respondent / Accused not guilty and acquitted him under Section 248(1) of Cr.P.C.,

4. According to the Learned Counsel for the Petitioner / Appellant / Complainant the 'Judgment of Acquittal' passed by the trial Court dated 20.10.2016 in C.C.No.3605 of 2009 is against Law, weight of evidence and in negation of 'Principles of Natural Justice'.

5. The Learned Counsel for the Petitioner / Appellant urges before this Court that the trial Court had totally ignored the evidence of the complainant as P.W.1 and in fact P.W.1 was cross examined by the Respondent / Accused. The Learned Counsel for the Petitioner / Appellant projects an argument that on the side of the Respondent / Accused there was no challenge in regard to the documents marked during the cross examination of P.W.1 (Complainant) on 29.10.2012. Therefore, the trial Court had committed an error in making an observation in the 'Judgment of Acquittal' that the Petitioner / Appellant / Complainant never appeared for cross examination.

6. The Learned Counsel for the Petitioner / Appellant proceeds to take a stand that on 26.04.2016 both the Petitioner / Appellant / Complainant and the Respondent / Accused had not appeared before the trial Court and on their side, the Petitions under Sections 256 and 317 of Cr.P.C., were filed and allowed by the trial Court. In effect, the contention of the Learned Counsel for the Petitioner / Appellant is that the trial Court was not correct in making an observation that the Petitioner / Appellant / Complainant never took any steps to subject himself for cross examination as P.W.1.

7. The Learned Counsel for the Petitioner / Appellant brings it to the notice of this Court that on 09.06.2016, when the Petitioner / Appellant / Complainant was present and was ready to subject himself for cross examination, the Respondent / Accused was absent and further, the Accused's Counsel had not cross examined P.W.1 (Complainant). However, this aspect of the matter was over looked by the trial Court before closing the evidence of P.W.1.

8. Added further, the Learned Counsel for the Petitioner / Appellant proceeds to state that even on 20.07.2016, the Respondent / Accused's Counsel had not cross examined the Appellant / Complainant (P.W.1) although he was present.

9. It is represented on behalf of the Petitioner / Appellant that on 18.08.2016 both the Petitioner / Appellant / Complainant and the Accused were present and due to Medical Leave of the Learned Magistrate (MMC) the matter was adjourned for Judgment. On 20.09.2016, also when both the parties were present, again because of medical leave of the Learned Magistrate, the matter was posted to 20.10.2016.

10. Lastly, it is submitted on behalf of the Petitioner / Appellant that the trial Court should have seen that even on 20.10.2016 the Appellant / Complainant's Counsel had represented that cross examination of P.W.1 was not complete and P.W.1 was willing to submit for the same. However, the trial Court had failed to consider that the Petitioner / Appellant had discharged his initial burden of the aspect of the 'Legally Enforceable Debt' and was cross examined once by the Accused's Counsel on 29.10.2012 itself.

11. Per contra, it is the submission of the Learned Counsel for the Respondent / Accused that there are no genuine or justifiable reasons for this Court to interfere with the 'Judgment of Acquittal' passed by the trial Court in C.C.No.3605 of 2009.

12. Expatiating his contention, the Learned Counsel for the Respondent / Accused takes a plea that since the Petitioner / Appellant / Complainant never took any steps to subject himself to cross examine, the trial Court opined that the case of the Petitioner / Appellant / Complainant was not a reliable one and resultantly found the Respondent / Accused not guilty and acquitted him under Section 248(1) of Cr.P.C.,

13. The Learned Counsel for the Respondent / Accused brings it to the notice of this Court that on 29.10.2012, the Petitioner / Appellant / Complainant was subjected to cross examination, which was not a complete one and since then, P.W.1 had not presented himself for continuation of his cross examination. Therefore, the Respondent could not challenge / assail the documents since the cross of P.W.1 was not completed.

14. In any event, the core contention projected on behalf of the Respondent / Accused is that the 'Judgment of Acquittal' passed by the trial Court stands good based on the facts and circumstances of the present case, which float on the surface.

15. At this juncture, this Court significantly points out that the power of the High Court, as an Appellate Authority is wide enough to apprise the entire gamut of the matter, to reappraise / review the evidence in right earnest. If there is a misreading of evidence and if the Judgment of Acquittal was based on wrong an appreciation of facts and evidence, then, the High Court would interfere with the 'Judgment of Acquittal' passed by the trial Court, to prevent an aberration of Justice. Further, in Law there is no distinction as regards the power of High Court / Appellate Court relating to the Appeals filed by State or others. In reality, the power of Appeal is to be exercised sparingly.

16. It is to be pointed out that the High Court ought to be very circumspect and tread cautiously in exercising the option of admitting Appeals against Acquittal. If the appreciation of evidence and the finding(s) arrived at by the trial Court suffer from a palpably erroneous approach and if the findings are contrary, capricious and perverse, then, the High Court would interfere to avoid 'Miscarriage of Justice'. In this Connection, this Court pertinently points out that the 'Miscarriage of Justice' may arise from acquittal of guilty is no less than from the conviction of an innocent Homo-Sapien. If there are compelling reasons or exceptional circumstances, then, the High Court can exercise its power as an Appellate Court to set aside the Judgment of Acquittal passed by the trial Court.

17. Even when the 'Judgment of Acquittal' is opposed to weight of evidence, unreasonable then, also the High Court would interfere. Ordinarily, as a Rule of Prudence, due weightage would be given by the High Court to the view of the trial Court in acquitting an Accused. In fact, a reversal of acquittal can be made by the High Court only if the conclusions of the trial Court do not point out to a 'POSSIBLE VIEW'. If the view of the trial Court can be reasonably arrived at, irrespective of the High Court agreeing with the same or not, the view of the trial Court cannot be interfered with and that the view of the High Court be substituted erasing the view of the trial Court. Also, a prudent and reasoned view of the trial Court ought not be interfered with by the High Court, as an Appellate Authority.

18. It is to be pointed out that an undeserving Acquittal Judgment is of no use to the society at large. However, no one shall escape the clutches of Law when once the guilt is proved by the prosecution side beyond reasonable doubt.

19. A mere perusal of ingredients of Section 378 (4) of Cr.P.C., unerringly points out that it places no restriction in an express or implied fashion on the complainant. As a matter of fact, the decision of the Hon'ble Supreme Court (Three Judge Bench) in Damodar S. Prabhhu V. Sayed Babalal H., reported in AIR 2010 Supreme Court at Page 1907 at Paragraph No.14 in an emphatic manner lays down of filing of an Appeal by the complainant in case of 'Acquittal' by the Learned Judicial Magistrate First Class before the High Court under Section 378 (4) of Cr.P.C., and thereafter the filing of Special Leave to Appeal before the Supreme Court of India under Article 136 of the Constitution of India. No wonder, as per Article 141 of the Constitution of India, the decision of the Hon'ble Supreme Court is binding on all the Courts in the Country and the said decision till date rules the field.

20. It is by now well settled legal position that just because the Leave is granted by this Court in a Original Petition, that does not in any manner, prevent the Respondent / Accused to assail the maintainability of an 'Appeal' at the time of its final hearing. Even on legal grounds, at any stage, the maintainability of Appeal can be projected by the Respondent / Accused before the appropriate Court. Even if a Special Leave is granted ex parte at an early state, that is not a ground to hold that the other side shall have no right at any stage to question the correctness and validity of the Special Leave.

21. As far as the present case is concerned, this Court on hearing the respective sides is of the earnest opinion that the Petitioner / Appellant / Complainant has raised some tangible / arguable points, which require consideration by this Court in a complete, comprehensive, threadbare and pragmatic fashion. Viewed in that perspective, this Court, at this stage, grants Special Leave to the Petitioner / Appellant / Complainant to prefer the Criminal Appeal. Consequently, the Criminal Original Petition succeeds. In fine, the criminal Original Petition is allowed.

In fine, the Criminal Original Petition is allowed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

ssd

To:

1. The Metropolitan Magistrate,
Fast Track Court III,
Saidapet, Chennai.
2. Do The Chief Metropolitan Magistrate
Egmore, Chennai.

Cr1. O.P.No.320 of 2017 in
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