

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.409 OF 1995**

Avinash Shankar BandagaleAppellant/Complainant

Vs.

Maruti Dattu Sontakke and Anr.Respondents

None for appellant.

Ms. Sharon D'souza i/b. I.S. Thakur for respondent no.1.

Ms. Pallavi Dabholkar, APP for respondent no.2.

**CORAM : K.R.SHRIRAM, J.
DATE : 6th NOVEMBER 2019**

PC.:

1 Ms. D'souza appearing for respondent no.1 states that the counsel, who was briefed to appear in the matter, is unwell and requests the matter be stood over by two weeks.

2 Having perused the copy of the impugned judgment with the assistance of Ms. Dabholkar for respondent no.3, in my view, this is a matter which does not require any interference. I have to note that the advocate or appellant has also been consistently absent.

3 I have perused the impugned judgment and the evidence. It is settled law that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. Paragraph 6 of **Allarakh K. Mansuri V/s. State Of Gujarat** reads as under :

6. The settled position of law regarding the powers to be exercised by the High Court in an appeal against the order of acquittal is that though the High Court has full powers to review the evidence upon which an order of

acquittal is based, it will not interfere with an order of acquittal because with the passing of an order of acquittal the presumption of innocence in favour of the accused is reinforced. The High Court should be slow in disturbing the finding of the fact arrived at by the trial court. The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. In our country it is not a jurisdictional limitation on the appeal court but a judge made guideline of circumspection. In Shivaji Sahebrao Bobade & Anr. v. State of Maharashtra [AIR 1973 SC 2622] this Court held :

"This Court had ever since its inception considered the correct principle to be applied by the Court in an appeal against an order of acquittal and held that the High Court has full powers to review at large the evidence upon which the order of acquittal was founded and to reach the conclusion that upon that evidence the order of acquittal should be reversed. The Privy Council in Sheo Swarup v. King Emperor 61 Ind App. 398 = (AIR 1934 P.C. 227(2), negated the legal basis for the limitation which the several decisions of the High Courts had placed on the right of the State to appeal under Section 471 of the Code. Lord Russell delivering the judgment of the Board pointed out that there was "no indication in the Code of any limitation or restriction on the High Court in the exercise of its powers as an appellate tribunal," that no distinction was drawn "between an appeal from an order of acquittal and an appeal from a conviction," and that "no limitation should be placed upon that power unless it be found expressly stated in the Code." He further pointed out at p.404 that, "the High Court should always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses." In Sanwat Singh vs. State of Rajasthan (1961) 3 SCR 12- = (AIR 1961 SC 715) after an exhaustive review of cases decided by the Privy Council as well as by this Court, this Court considered the principles laid down in Sheo Swarup's case and held that they afforded a correct guide for the appellate court's approach to a case against an order of acquittal. It was again pointed out by Das Gupta, J. delivering the judgment of five judges in Harbans Singh v. State of Punjab (1962) suppl. 1 SCR 104 = (AIR 1962 SC 439).

"In many cases, especially the earlier ones the Court has in laying down such principles emphasised the necessity of interference with an order of acquittal being based only on 'compelling and substantial reasons' and has expressed the view that unless such reasons are present an Appeal Court should not interfere with an order of acquittal (vide Suraj Pal Singh v. The State, (1952 SCR 193 = (AIR 1952 SC 52) Ajmer Singh v. State of Punjab, (1953) SCR 418 = (AIR 1953 SC 76), Puran v. State of Punjab, AIR 1953 SC, 459). The use of the words 'compelling reasons' embarrassed some of the High Courts in exercising their jurisdiction in

appeals against acquittals and difficulties occasionally arose as to what this Court had meant by the words 'compelling reasons'. In later years the Court has often avoided emphasis on 'compelling reasons' but nonetheless adhered to the view expressed earlier that before interfering in appeal with an order of acquittal a court must examine not only questions of law and fact in all their aspects but must also closely and carefully examine the reasons which impelled the lower courts to acquit the accused and should interfere only if satisfied after such examination that the conclusion reached by the lower court that the guilt of the person has not been proved is unreasonable."

4 In this case, appellant had filed a complaint under Section 138 of the Negotiable Instrument Act against respondent no.1 for dishonour of cheques. It is the case of appellant that he had given friendly loan of Rs.46,400/- on 25th June 1992 on receipt of which respondent no.1 executed a bond on a stamp paper agreeing to repay the amount by 31st October 1992. It is the case of appellant that on 1st November 1992 respondent no.1 gave him two cheques bearing nos.Z-900696 and 900697 for Rs.23,400/- and Rs.23,000/- respectively. These cheques when presented on 5th December 1992 were dishonoured for insufficiency of funds. On 16th December 1992 appellant issued notice to the accused calling upon him to pay the amounts within 15 days. On 21st December 1992 the notice was received by him but respondent no.1 failed to repay the amount. Hence, the complaint.

5 The notice has been replied by respondent no.1 vide an advocate's letter dated 4th January 1993 in which the stand of respondent no.1 has been that he never took an amount of Rs.46,400/- but instead took only Rs.20,000/- of which Rs.5,000/- has been repaid by way of demand

draft and the balance of Rs.15,000/- was paid in cash. It is also stated in the said reply that respondent no.1 had given two blank cheques without filling in the date or amount but signed by respondent no.1 and also a blank stamp paper signed by respondent no.1. The complaint was presented on 16th January 1993. In the reply, accused has stated expressly that he had given only two cheques with only his signature on the cheques but no other details were filled in and those cheques were given only as a security. This also should have been dealt with in the complaint.

6 In the cross-examination of PW-1, who was only witness who deposed for appellant, PW-1 admits having received a sum of Rs.5,000/- but according to him it relates to some other transaction. I would have expected complainant to be forthright and mention in the complaint clarifying this position when he has received the reply in which the accused – respondent no.1 has categorically stated that the amount of Rs.5,000/- was paid by way of demand draft, Rs.15,000/- was paid in cash and the amount lent was only Rs.20,000/- and not Rs.46,400/-.

7 The Trial Court has also analysed the fact that if according to appellant the accused had given two cheques for Rs.23,400/- and Rs.23,000/-, respectively on 1st November 1992, where was the need to issue a confirmation letter on 1st November 1992 (Exhibit 33). Based on this and the evidence recorded, the Trial Court has come to a conclusion that the case of appellant that accused gave the cheques, as alleged, cannot be

accepted. I do not find anything wrong in the arrival of this conclusion.

8 In the circumstances, I cannot gather myself to conclude that the conclusion arrived at by the Trial Court was based on conjectures and hypothesis and not on the legal evidence.

9 Therefore, appeal dismissed.

(K.R. SHRIRAM, J.)