

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 1357 of 2020**

State of Chhattisgarh, Through Station House Officer, Police Station Lundra, District Surguja, Chhattisgarh.

---Applicant (Prosecution)

Versus

Puran Das S/o Sukher Das, Aged about 65 years, R/o Village Badgari, Police Station Lundra, District Surguja, Chhattisgarh.

--- Respondent (Accused)

For Applicant/State :- Mr. Jitendra Pali, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

19/11/2020

1. The State of Chhattisgarh has filed this application under Section 378(3) of CrPC seeking the leave to appeal against the order and judgment of acquittal passed in favour of the respondent for offence punishable under Section 447 of IPC.
2. Mr. Jitendra Pali, learned Deputy Advocate General, would submit that learned Chief Judicial Magistrate is absolutely unjustified in acquitting the

respondent herein by recording a finding which is perverse and contrary to the record.

3. I have heard learned counsel for the petitioner and perused the record.

4. Their Lordships of the Supreme Court, in the matter of Chandrappa v. State of Karnataka¹, have laid down the principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal which states as under :-

"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate Court has full power to review, reappraise 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 emphasize 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.

¹ (2007) 4 SCC 415

(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 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. "

5. The Principle of laid down in the matter of **Chandrappa** (supra) has been followed by Their Lordships in the matter of **Sampat Babso Kale v. State of Maharashtra**² and held that presumption of innocence which is attached to every accused person gets strengthened when such an accused is acquitted by the trial Court and the High Court should not interfere with the decision of the trial Court which has recorded the evidence and observed the demeanor of witnesses.

6. The case of the prosecution was that the accused/respondent forcibly dispossessed the complainant Krishna Kumar Gupta (PW 1) and made construction on his land and thereby committed offence under Section 447 of IPC in which the trial

² (2019) 4 SCC 739

Court acquitted the accused/respondent by holding that the State has failed to prove that the land in dispute was owned by the complainant Krishna Kumar Gupta (PW 1). Paragraph 10 of the impugned order states as under :-

“10. इस प्रकार प्रकरण में आए साक्ष्य विश्लेषण से स्पष्ट है की प्रार्थी द्वारा घटना स्थल जमीन को अपने स्वत्व को होना बताया है, जिस पर अभियुक्त द्वारा कच्चा माकन बनाया जाकर आपराधिक अतिचार करना बताया गया है, परन्तु उक्त में सर्वप्रथम अभियोजन, प्रार्थी को यह प्रमाणित करना महत्वपूर्ण हो जाता है की घटना स्थल वाद जमीन उनके स्वामित्व की है, जिस संबंध में ऐसा कोई दस्तावेज पेश नहीं किया गया है, मात्र मौखिक वांछा करने से प्रमाणित नहीं किया जा सकता है की उक्त भूमि घटना स्थल प्रार्थी के स्वत्व की थी, जिस पर अभियुक्त द्वारा आपराधिक अतिचार किया गया | साक्षी क्रमांक 03 कन्हैया प्रसाद ने अपने प्रतिपरीक्षण की कंडिका 05 के चौथी लाइन में स्वीकार किया है की वादभूमि में पूरन दास अभियुक्त रहता है, वह उसकी पुश्तैनी मकान है, ऐसी स्थिति में अभियुक्त द्वारा प्रार्थी के जमीन पर अतिचार करना प्रमाणित नहीं पाया जाता है | अतः यह प्रमाणित नहीं पाया जाता है की अभियुक्तगण ने प्रार्थी कृष्णा प्रसाद गुप्ता के आधिपत्य की भूमि ख.नं. 223, 311/1, 433/559/1, 310, 643 रकबा क्रमशः 0.024, 0.097, 0.576, 0.105, 0.109 भूमि को जोतकर तथा भूमि ख.नं. 223 में मकान निर्माण कर अपराध करने के आशय से प्रवेश कर आपराधिक अतिचार कारित किया |

अतः विचरण प्रश्न क्रमांक ०१ को विश्लेषण उपरांत "अप्रमाणित" किया जाता है।”

7. Learned Chief Judicial Magistrate, while acquitting the respondent herein, has taken reasonable view of the matter by taking into account admissible legal evidence on record and which cannot be said to be perverse necessitating and warranting grant of leave to appeal at the instance of the State in view of the principle of law laid down by the Supreme Court in the above-mentioned judgments, as such, I do not find any merit in the matter.

8. The instant application filed under Section 378(3) of CrPC deserves to be and is accordingly dismissed. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet