IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1526 OF 2003

The State of Maharashtra	)	….Appellant/Complainant
V/s.		
Radheshyam Motilal Rungta,	)	
R/at. Ramesh Niwas, 8, 51/C Bulabhai	)	
Desai Road, Mumbai – 400 026	)	…..Respondent/Accused

Ms. Pallavi Dabholkar, APP for State – appellant.
Ms. Shashi Prabhat Zhunzhunwala, original complainant present.
Mr. P.I. Wagh, Senior P.I., Malabar Hill Police Station present.

CORAM : K.R.SHRIRAM, J.
DATE : 6th MARCH 2020

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment passed by the Court of Sessions, Greater Bombay, on 13th December 2002, acquitting respondent (accused) by allowing an appeal filed against an order of conviction passed by the Additional Chief Metropolitan Magistrate, 40th Court, Girgaon, Mumbai, on 29th January 2000 under Section 420 (*Cheating and dishonestly inducing delivery of property*) of the Indian Penal Code (IPC).

2 It is the case of prosecution that accused had approached one Mr. Ramrichwal Brahmadatta Zhunzhunwala (PW-3), the father-in-law of complainant – Shashi Prabha Zhunzhunwala (PW-4), through a family friend by the name Nemani (who has not been examined) for a loan for a short period of three months. Accused was given Rs.2 lakhs in cash against bill of exchange from Mrs. Lilawati Tibrewal (PW-5), the daughter of PW-3 and a

further sum of Rs.2 lakhs by way of cheque from complainant (PW-4). The first amount of Rs.2 lakhs (cash from PW-5) was given on 6th September 1996 and the second amount of Rs.2 lakhs (by cheque from PW-4) was given on 9th October 1996. These amounts were given against interest at a rate of 18% p.a. The interest paid was deducted in advance for the first loan and as regards the second loan, a sum of Rs.15,000/- was paid by accused to PW-3 towards interest. When the amount became due, accused failed to repay the amount of Rs.4 lakhs despite repeated demands. Therefore, on 6th January 1997, accused pledged shares of various companies together with duly signed transfer forms with PW-3 as security. As accused was still not able to repay the amount of Rs.4 lakhs, accused instructed PW-3 to sell the shares pledged and recover the amount of Rs.4 lakhs.

3 Complainant then tried to transfer some of the shares, viz., shares in Punjab Chemicals and Pharmaceuticals Limited and Bajaj Automobiles Limited, alongwith duly signed transfer forms. Complaint is totally silent about the other shares. The two companies replied stating that the shareholder has informed them that these shares have been stolen and therefore, the shares cannot be transferred. Complainant did not bother to sell the other shares for transfer but straightaway went to Malabar Hill Police Station and lodged a case vide C.R. No.115/1997 under Section 420 of IPC. The case was registered on 21st September 1997.

4 The Additional Chief Metropolitan Magistrate, 40th Court, Girgaon, framed charges under Section 420 of IPC and accused pleaded not

guilty and claimed to be tried. Accused in his statement under Section 313 of the Code of Criminal Procedure admitted the fact that he had taken a loan of Rs.4 lakhs but stated that the shares, that he handed over, were only for collateral security and not for transfer. Before the Additional Chief Metropolitan Magistrate, evidence of nine witnesses were recorded, viz., Omprakash Amritpal Zhunzhunwala, brother-in-law of complainant as PW-1; Prabhat Ramyashpal Zhunzhunwala, husband of complainant as PW-2; Ramrichwal Brahmadatta Zhunzhunwala, father-in-law of complainant as PW-3; Shashi Prabhat Zhunzhunwala, complainant as PW-4; Lilawati Niranjanlal Tibrewal, sister-in-law of complainant as PW-5; Rakesh Puria, share broker as PW-6, Ramesh Dhanji Gala, sub broker as PW-7; Ashwin U. Vora as PW-8; and Bapu Shivappa Latkar, Investigating Officer as PW-9.

5 The Additional Chief Metropolitan Magistrate passed an order of conviction under Section 420 of IPC and sentenced accused to suffer rigorous imprisonment for three years and a fine of Rs.1000/-. In default of payment of fine, simple imprisonment for one month. Aggrieved by this conviction, accused preferred an appeal, in which the judgment impugned in this appeal, was passed.

6 The Apex Court in ***Ghurey Lal V/s. State of U.P.*** [1] has culled out the factors to be kept in mind by the Appellate Court while hearing an appeal against acquittal. Paragraph Nos.72 and 73 of the said judgment read as under:

72. The following principles emerge from the cases above:

1. (2008) 10 SCC 450

1. The appellate court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It

can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed 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.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial court was wrong.

73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. 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.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

i) The trial court's conclusion with regard to the facts is palpably wrong;

ii) The trial court's decision was based on an erroneous view of law;

iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

v) The trial court's judgment was manifestly unjust and unreasonable;

vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.

vii) This list is intended to be illustrative, not exhaustive.

> *2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.*
>
> *3. If two reasonable 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.*

The Apex Court in many other judgments including ***Murlidhar & Ors. V/s. State of Karnataka***[2] has held that unless, the conclusions reached by the trial court are found to be palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, Appellate Court should not interfere with the conclusions of the Trial Court. Apex Court also held that merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view.

We must also keep in mind that there is a presumption of innocence in favour of respondent and such presumption is strengthened by the order of acquittal passed in his favour by the Trial Court.

The Apex Court in ***Ramesh Babulal Doshi V/s. State of Gujarat*** [3] has held that if the Appellate Court holds, for reasons to be recorded that the order of acquittal cannot at all be sustained because Appellate Court finds the order to be palpably wrong, manifestly erroneous or demonstrably unsustainable, Appellate Court can reappraise the evidence to arrive at its own conclusions. In other words, if Appellate Court finds that there was nothing wrong or manifestly erroneous with the order of the Trial Court, the

2. (2014) 5 SCC 730
3. 1996 SCC (cri) 972

Appeal Court need not even re-appraise the evidence and arrive at its own conclusions.

7 On 4th March 2020, when the appeal was called out, the Court issued notice to complainant as well as accused. The Senior Police Inspector of Malabar Hill Police Station is present in Court and has submitted a report stating that he had served the notice on complainant and accused but accused, who is 87 years old, informed him that he will not be coming to the Court. Complainant is present in Court.

8 I have perused the impugned judgment, considered the evidence and also heard Ms. Dabholkar, learned APP. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. There are many contradictions and omissions.

9 The charge against accused was "*that you between 6.1.96 to 21.7.97 at Parshram Puria Bhavan, Ground Floor, 270, Walkeshwar Road, Mumbai – 6, cheated the complainant by withdrawing cash amount of Rs.4 lacs by cheque and caused loss by not transferring shares duly transferred on his and his relative's name and thereby committed an offence punishable under Section 420 of the IPC and within my cognizance*".

10 The transaction, which is the subject matter of the present case, is the amount of Rs.2 lakhs that was given by PW-4 to accused on 9th October 1996. It is prosecution's case, as noted earlier, at the cost of repetition, on 9th October 1996 complainant gave Rs.2 lakhs to accused to be repaid within

three months and instead of repaying, on 6th January 1997 accused pledged shares of 15 companies alongwith transfer forms duly signed. On 11th March 1997, accused deposited further shares as security. In the first week of August 1997, accused informed PW-3, the father-in-law of PW-4 and father of PW-5 - Lilawati Tibrewal, who had given Rs.2 lakhs in cash, that he was unable to repay the loan of Rs.4 lakhs and gave his consent for transfer of the shares in the name of PW-3 – Ramrichwal Brahmadatta Zhunzhunwala. Complainant received information from Punjab Chemicals and Pharmaceuticals Limited and Bajaj Automobiles Limited that those shares were reported as lost and complainant was also informed by Rakesh Puria (PW-6) that the shares presented were found lost and therefore, could not be transferred.

11 Police recorded statement of witnesses and most of them have been examined before the Trial Court. Among the nine witnesses, PW-1 to PW-5 are all family members and their testimony as regards to receiving Rs.4 lakhs has not been disputed by accused. The stand of accused is that it is a civil liability.

12 Before we proceed further, it will be useful to reproduce Section 420 and the same reads as under :

> *Section 420. Cheating and dishonestly inducing delivery of property . - Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable to being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

What is cheating, can be found in Section 415 and the same reads as under :

> *Section 415. Cheating.- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".*

Reading these provisions together, the essential ingredients of Section 420 of IPC are (a) cheating; a person must commit the offence of cheating under Section 415; (b) the person cheated must be dishonestly induced to; (i) deliver property to any person; or (ii) make, alter or destroy a valuable security or anything signed or sealed and capable of being converted into a valuable security; and (iii) *mens rea* of the accused at the time of making the inducement.

13 Has prosecution proved that accused fraudulently or dishonestly induced complainant to deliver the amount of Rs.2 lakhs, which complainant would not have delivered, if complainant was not deceived by accused handing over stolen share certificates? In my view, prosecution has miserably failed to prove this.

14 PW-6 is a share broker and was running a business in the name of Motisons Private Limited. PW-7 was running a proprietary concern in the name of Mitra Options and was working as a sub-broker with PW-6. PW-8 is an individual who in August 1996 had handed over various shares to PW-7

as security as he was dealing with him. Since PW-8 stopped dealing with PW-7, he demanded his shares back and at which time, he was told that the shares were missing. On the advice of PW-7, PW-8 informed the companies to stop transfer of those shares. It is alleged by prosecution that the shares handed over by accused to complainant and her family members are the same shares belonging to PW-8, who had asked to stop the transfer of those shares. The findings of the Trial Court is based mainly on the admission by accused that he had handed over those shares to complainant's father-in-law (PW-3) by way of additional security.

15 The evidence shows that the loan of Rs.2 lakhs plus Rs.2 lakhs was never advanced against those shares but was advanced much prior to the date on which the shares were handed over. The cash loan of Rs.2 lakhs was handed over by Lilawati Zhunzhunwala (PW-5) on 6th September 1996 and Rs.2 lakhs by cheque was handed over by complainant (PW-4) on 9th October 1996. Some of the shares were handed over as security on 6th January 1997 and some on 11th March 1997. Therefore, both the loans are totally independent of handing over of the share certificates as security. Even in the complaint, it is stated that as against the cash loan of Rs.2 lakhs made on 6th September 1996, a separate bill of exchange was executed by accused and records also shows that it was given after deducting interest for three months. Similarly, the advance made by complainant was by giving a crossed cheque on 9th October 1996. PW-3 admits that he had received Rs.15,000/- towards interest in advance as accused had issued two cheques

of Rs.7,500/- each towards interest. Therefore, complainant's statement that it was a friendly loan transaction is incorrect but it was more a money lending transaction for a short period of three months. Therefore, subsequent handing over of shares for transfer or otherwise as collateral security never induced the creditors or complainant to give the loan to accused.

16 It would also, therefore, be wrong to state that accused misrepresented that the shares actually belonged to him and believing him, the loans were disbursed. The loans were disbursed much prior to the handing over of shares as collateral, which accused gave because PW-3 was insisting on repayment of the loans.

17 As regards the missing report given by PW-6 to Pydhonie Police Station, there is no evidence to speak off. No copy of the report has been produced. If such share certificates had gone missing from the custody of PW-6, the Malabar Hill Police Station should have investigated even that aspect. One cannot simply accept the statement of a broker when he was told to return the shares that it has gone missing. That would not make the finder a thief unless theft is proved. In this case, it is not proved that accused stole those shares. Moreover, only two companies refused to transfer on the ground that they were informed about loss of shares. What happened to the shares of the other companies which were given by accused to PW-3? After pledging those shares, no further advance was given by complainant. Infact, if all the shares were stolen shares as alleged in the complaint, prosecution should have presented the remaining share certificates also alongwith the

transfer forms and those share certificates and transfer forms ought to have been seized as stolen property by the Court. That has also not been done.

18 In the circumstances, in my view, the Sessions Court sitting in appeal was absolutely correct in acquitting accused and reversing the order of conviction passed by the Trial Court.

19 Appeal dismissed.

20 A copy of this judgment should be provided free of cost by the registry to accused.

(K.R. SHRIRAM, J.)