

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.480 OF 2004
ALONG WITH
CRIMINAL REVISION APPLICATION NO.128 OF 2004**

Union Territory of Diu	)	
Through State	)	..Appellant
V/s.		
1 Amarsinh Bhoga Solanki	)	
Partner M/s Rajmati Petroleum)		
Diu	)	(Org. Accused)
2 State of Maharashtra	)	..Respondents

Mr. H. V. Venegaonkar for Appellant in Appeal No.480 of 2004 and for Respondent no.2 in Revision Application No.128 of 2004

Mr. S. V. Marwadi for Applicant in Revision Application No.128 of 2004

Dr. Sujay Kantawalla i/b Parinam Law Associates for Respondent No.1 in both the matters

Mrs. Anamika Malhotra APP for State

**CORAM : K.R.SHRIRAM, J.
DATED : 4th JANUARY 2021**

ORAL JUDGMENT

1 On 21-12-2020, Mr. H. V. Venegaonkar is shown to have appeared for respondent no.1-original applicant when the Interim Application taken out by respondent was heard. The court sherestedar informs me that Mr. Venegaonkar had not appeared that day but his junior had appeared but gave appearance of Mr. Venegaonkar.

2 This is an appeal impugning an order and judgment dated 27-1-2004 passed by Learned Chief Judicial Magistrate, Diu, acquitting the accused for the offence punishable under Section 406 (*punishment for criminal breach of trust*), Section 407 (*criminal breach of trust by carrier etc.*), Section 468 (*forgery for purpose of cheating*), Section 477 (*fraudulent cancellation*,

destruction etc., of will, authority to adopt or valuable security) and Section 477A (*falsification of accounts*) of the Indian Penal Code.

3 According to appellant, accused was working as DOLD Operator for Indian Oil Corporation Limited (IOCL) between October 1999 to 27-1-2000 at Malal Diu. DOLD stands for Dealer Operating Lubs Depot. During this period, accused is alleged to have misappropriated an amount of Rs.1,11,31,209.56 by making false entries in the computer. Accused is alleged to have made false entries showing goods worth of Rs.1,11,31,209.56 were sold to one Krishna Enterprises and committed forgery by falsification of accounts and tampered with evidence by destroying the detailed work out of accounts in the computer.

4 After initial investigation, charge sheet was filed and accused pleaded not guilty and claimed to be tried. To prove its charge, appellant led evidence of 11 witnesses.

5 It is not disputed that accused was appointed as DOLD operator for Diu by IOCL. It is prosecution's case that whenever the product of IOCL was received by accused at the depot, the same was to be sold either in cash or by Demand Draft or if, IOCL has given cheque facility, accused was supposed to collect the cheque and deposit the same alongwith all the cash / Demand Draft received in the account of IOCL in State Bank of India at Veraval, on the same day or the next day.

6 Accused is alleged to have sold lubricants illegally and unauthorisedly to three parties namely; M/s. Rajmoti Petroleum Kodinar, M/s Amar Sinhji

Mills Wankaner and M/s Jay Murlidhar Petroleum, Diu,

7 P.W.-1 and P.W.-2 are panch witnesses. P.W.-1 turned hostile and stated that he was not called by the police nor he has participated in any panchnama and did not even identify his signature on the spot panchnama.

P.W.-2 is a stock panch witness who in his cross-examination states that he has experience in drawing panchnamas and must have conducted / recorded about 4 to 5 panchnamas. Therefore, the evidence of P.W.-2 also is not reliable.

P.W.-3 to P.W.-7 are all employees of IOCL. P.W.-8 is State Bank of India employee. P.W.-9 is the one who lodged the FIR and filed the charge sheet. P.W.-10 and P.W.-11 are the Investigating officers.

8 As regards DCR (Daily Collection Report) Nos.1 and 26, the same has been explained by accused. So far as the remaining three DCRs, i.e., 80, 85, and 93, P.W.-4 confirmed having received post dated cheques from Jay Murlidhar Petroleum and having filed complaints under Section 138 of the Negotiable Instruments Act against Jay Murlidhar Petroleum. Even P.W.-7 has admitted that Jay Murlidhar Petroleum had subsequently given cheques to IOCL, which were dishonoured and IOCL has filed criminal case against Jay Murlidhar Petroleum. P.W.-7 is the Senior Manager of IOCL. P.W.-7 also admits that he has not disclosed to the police that cheques were received and complaints under Section 138 have been filed against Jay Murlidhar Petroleum. What has really been, as proverbially stated, the last straw on the camel's back, is the fact that prosecution had produced only copies of

the DCRs without proving the same as required under the Indian Evidence Act. These are the DCR's relying on which allegations are made against accused. In fact police has not even attached the computer of DOLD. I agree with the Trial Court when it observes that the best piece of evidence would have been computer hard disk which contained all the material of the DCR. Police has not seized those hard disk. Copy will be admissible only if prosecution proved that the original has been destroyed for some other reason which is acceptable. They are unable to produce the originals. No attempt seems to have been made by prosecution for this. Upon going through the entire evidence, there seems to be explanation to DCR Nos.1 and 26. For DCR Nos. 80, 85 and 93, even assuming for the sake of argument accused had given them without an approval of IOCL, IOCL has accepted the cheques of Jay Murlidhar Petroleum. Just because the cheques given by Jay Murlidhar Petroleum were dishonoured, does not mean accused has committed criminal breach of trust or committed forgery. It looks like IOCL having granted credit facility to Jay Murlidhar Petroleum have made accused a scapegoat because cheques given by Jay Murlidhar Petroleum were dishonoured. Trial Court has also explained in paragraph 23 why DCRs relied upon by prosecution were not admissible in evidence.

9 Moreover, when allegations of prosecution is that accused has misappropriated the value of 92 barrels of lub, appellant ought to have shown and proved beyond reasonable doubt that accused had misappropriated the sale proceeds to his personal account instead of paying

it to IOCL. But the fact is IOCL received the cheques from Jay Murlidhar Petroleum and there is no evidence in any case of accused having received those sale proceeds into his personal account. Even if we assume accused had sold 92 barrels to Jay Murlidhar Petroleum, it would still not constitute a case of misappropriation. Prosecution ought to have shown that accused having received the amount has not paid it over to IOCL and there is no evidence whatsoever to that effect. In the evidence of P.W.-4 and P.W.-5, it has come out that there were many instances of supply being made by IOCL but papers were prepared in DOLD. In the evidence of P.W.-4 and P.W.-5 it has come out that Jay Murlidhar Petroleum was a very important client / customer of IOCL.

10 More importantly, if we go through the evidence of P.W.-3, who allegedly took out the printouts from the computer, he says that printouts were in existence when the police recorded his statements. P.W.-3, who is the Computer Engineer has stated that the information in the computer is saved in the hard disk and that hard disk from computer was the primary source of material. P.W.-3 says that printouts were taken out from one floppy by using another computer and not from the main computer on which all the data was recorded. It will not be out of place to say that in such a case there were ample possibilities of the printouts of the DCRs being tampered with. P.W.-4 says in his testimony that he did not verify whether accused has sold barrels and received payment. P.W.-4 has not produced the cash receipt for DCR Nos. 80, 85 and 93 before the police. P.W.-4 says he

does not remember whether requisition was made by DOLD operator in writing and he did not examine the entire file of 5 DCRs. P.W.-4's answers I find, were rather evasive.

11 In the circumstances, having considered the entire evidence, there is not even an iota of evidence to show that accused converted the property entrusted to him by IOCL for his own use and committed criminal breach of trust and the charge of offence under Section 408 of IPC fails. For the reason of non admissibility of DCRs on record, it cannot be said that accused committed forgery for the purpose of cheating as no false documents purported to have been made by accused, have come on record.

12 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. 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

1. (2008) 10 SCC 450

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.

13 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

2. (2014) 5 SCC 730

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 respondents and such presumption is strengthened by the order of acquittal passed in their 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 Appeal Court need not even re-appraise the evidence and arrive at its own conclusions.

11 With the assistance of Learned APP Ms Malhotra, I have considered the evidence, documents and the impugned judgment. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. From the evidence available on

3. 1996 SCC (cri) 972

record, there is nothing to substantiate the charge leveled against accused.

14 There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to accused 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, accused having secured acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court observed that the prosecution had failed to prove its case.

15 In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

16 Appeal dismissed.

17 In view of the dismissal of the appeal, criminal revision application no.128 of 2004 does not survive and accordingly stands disposed.

18 Bail bonds be accordingly discharged.

(K.R. SHRIRAM, J.)

Meera
M.
Jadhav

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