

HON'BLE JUSTICE G. SRI DEVI

CRIMINAL APPEAL No. 412 of 2010

JUDGMENT:

This appeal is directed against the judgment of acquittal dated 24.06.2008 recorded by the II Additional Metropolitan Sessions Judge, Hyderabad, in Criminal Appeal No.94 of 2007 for the offences punishable under Sections 409, 420, 468 and 471 of I.P.C. The appellant is the State.

The case of the prosecution is that A-1 to A-3 have misappropriated the amount at Stationery Wing, Hyderabad. A-1 to A-3 used three types of Modus Operandi to commit the misappropriation i.e., (1) Excess debiting (2) Direct debiting and (3) Excess deduction.

The trial Court framed charges against A-1 to A-3 for the offences punishable under Sections 409, 420, 468 and 471 of I.P.C. Plea of the accused is one of total denial. To prove the guilt of the accused, the prosecution has examined P.Ws.1 to 19 and got marked Exs.P1 to P85. Neither oral nor documentary evidence was adduced on behalf of the accused.

On considering the entire material available on record, the trial Court, vide judgment in C.C.No.279 of 1999 dated 26.02.2007, found A-1 to A-3 guilty of the offences punishable under Sections 409, 468, 471 and 420 of I.P.C. and consequently convicted and sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.500/- each, in default to suffer simple imprisonment

for a period of one month each for each offence under Sections 409, 468, 471 and 420 of I.P.C. and all the sentences shall run concurrently. Aggrieved by the said judgment, A-1 to A-3 preferred CrI.A.No.94 of 2007 and that the II Additional Metropolitan Sessions Judge, Hyderabad, by judgment, dated 24.06.2008, after re-appreciating the entire material on record, held that the prosecution failed to establish the guilt of A-1 to A-3 beyond all reasonable doubt and accordingly acquitted A-1 to A-3. Against the said judgment of acquittal the State preferred the present appeal.

Heard learned Assistant Public Prosecutor for the appellant and the learned Counsel for the respondents/ accused.

In case of appeal against acquittal the scope of appeal is circumscribed by limitation. Unless the approach of lower Court to the consideration of evidence is vitiated by manifest illegality or conclusion arrived at by the lower Court is perverse, no interference with the order of acquittal is permissible.

In *Mrinal Das Vs. State of Tripura*¹ the Apex Court held as under:

It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re- appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on

¹ (2011) 9 SCC 479

exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed.

In *Maloth Somaraju Vs. State of Andhra Pradesh*² the Apex Court held that there can be no two opinions that merely because the acquittal is found to be wrong and another view can be taken, the judgment of acquittal cannot be upset. The appellate Court has more and serious responsibility while dealing with the judgment of acquittal and unless the acquittal is found to be perverse or not at all supportable and where the appellate Court comes to the conclusion that conviction is a must, the judgment of acquittal cannot be upset. The appellate Court has to examine as

² (2011) 8 SCC 635

to whether the trial Court, while upsetting the acquittal, has taken such care.

I have gone through the evidence and the judgments of the Courts below. The trial Court mainly relied on Ex.P2 which is the enquiry report of P.W.2. In the cross-examination, P.W.2 has categorically admitted that most of the receiving officers are not examined and some of the witnesses, who are the receiving officers, did not state about the complicity of any of the accused. P.W.2 further stated that the Government at the first instance appointed Mr.Meera Moinuddin, Special Grade Deputy Collector, Revenue Department to enquire about the irregularities and misappropriation, pointed out in the audit report and that he had submitted his report. But for the reasons best known, the prosecution did not choose either to examine the said Meera Moinuddin or produce the enquiry report submitted by him. Non-production of the Enquiry Officer, who has submitted the report at the first instance, and the Enquiry submitted by him, is fatal to the case of the prosecution and that there is no proper explanation from the prosecution as to why they suppressed the said fact.

In view of the Judgments referred to above and having regard to the facts and circumstances of the case, I am of the view that there is no illegality or perversity in the findings of the lower appellate Court and that there is nothing to interfere and the same is liable to be dismissed.

Accordingly, the appeal is dismissed confirming the judgment dated 24.06.2008 passed in CrI.A.No.94 of 2007 on the file of the II Additional Metropolitan Sessions Judge, Hyderabad.

As a sequel thereto, Miscellaneous Petitions, if any, pending shall stand closed.

JUSTICE G. SRI DEVI

12.02.2021
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