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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 09th October, 2023
Pronounced on: 11th December 2023

+ CRL.A. 156/2017

IRSHAD AHMAD

..... Appellant

Through: Mohd. Shamikh, Advocate.

versus

SUKHE SINGH @ MAHESH MASTER

..... Respondent

Through: Mr. S.S. Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present appeal under section 378(4) of Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred by the appellant assailing the judgment of acquittal dated 05.04.2016 in CC No.789/2015 passed by the learned ACMM-Shahdara District, Karkardooma Courts, Delhi whereby the respondent herein was acquitted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1988 ('NI Act').

Background

2. Briefly stated the facts of the present case, as alleged in the complaint, are as follows:-

- i. The appellant and the respondent were already acquainted before the complaint was filed. The respondent used to run a business



in property dealing and selling plots in Delhi and Ghaziabad. In the first week of June 2007, the appellant contacted the respondent for the purchase of a plot. A deal was entered into between the parties for the purchase of a plot of land for a sum of Rs. 2,07,500/-.

- ii. It is the case of the appellant that he had made payment of the abovementioned amount to the respondent 'all in cash' on three different occasions, i.e., Rs. 1 lakh on 07.06.2007, Rs. 50,000/- on 25.06.2007, Rs. 57,500/- on 07.07.2007. However, after these payments were made by the appellant when he visited the site of the plot, it came to his knowledge that the respondent had already sold the said plot to other people and they were quarreling with the respondent.
- iii. Thereafter, the appellant demanded that the respondent return his money, which was agreed to by the latter.
- iv. The appellant has averred that the respondent did not have money at his disposal at that point in time and he issued four post-dated cheques in the discharge of his legal liability towards the return of the money. All four cheques were drawn in the name of the appellant - cheque no. 690665 for a sum of Rs. 50,000/- dated 30.01.2009; cheque no. 690668 for a sum of Rs. 50,000/- dated 30.01.2009; cheque no. 680666 for a sum of Rs. 50,000/- dated 27.02.2009 and cheque no. 680667 for a sum of Rs. 50,000/- dated 30.03.2009.



- v. Cheques no. 680665 and 680668 were returned dishonored *vide* return memos dated 08.05.2009, cheque no. 680667 was returned dishonored *vide* return memo dated 04.04.2009 and cheque no. 680666 was returned dishonored *vide* return memo dated 28.02.2009, due to 'insufficient funds'.
- vi. Thereafter, the respondent asked the appellant to deposit the cheques again in the first week of June 2009, saying that he would arrange for funds by then.
- vii. Accordingly, the appellant deposited the cheques again, however, all four of which were returned dishonored due to 'insufficient funds,' *vide* return memo dated 03.06.2009.
- viii. The appellant sent a legal notice dated 06.06.2009 calling upon the respondent to make these payments but no response was given by the respondent person to the same.
- ix. Upon not receiving the cheque amounts, the appellant initiated the proceedings under Section 138 of the NI Act before the Court of learned ACMM (Shahdara), Karkardooma Courts, Delhi dated 11.07.2009.

3. The learned Magistrate, after going through the averments made in the complaint issued summons to the respondent. The respondent thereafter appeared in pursuance of a summons issued to him and in his statement under section 251 of the Cr.P.C., pleaded innocence, and claimed trial.

4. During the trial, the appellant to prove his case, examined himself as CW-1 and reiterated the contents of his complaint in his evidence. He also examined his bank account statement (CW-2/A) which was produced by the



clerk of the bank (CW-2). On the other hand, the respondent had not examined himself as a witness however, he examined Mr. Manoj Kumar (DW-1) as his sole defence witness, who stated that the appellant had taken the cheques from him on the pretext that the accused had authorized him to receive those cheques.

5. On appreciation of evidence, the learned Magistrate held that the cross-examination of the appellant did not inspire confidence hence, the same could not be relied upon for the conviction of the respondent for the offence under Section 138 of the NI Act. The learned Magistrate noted that there was no corroborative evidence in the bank account statement of the appellant (Ext. CW-2/A), as produced by the Assistant Manager, SBI Khureji Khas Branch, Delhi, that can substantiate the claim and financial capacity of the appellant that he had paid these alleged sums of money to the respondent. Therefore, the appellant was not able to establish how he paid the respondent in the first place. The learned Magistrate further noted that the cross-examination of the appellant had demolished his case and concluded that reliance could not be placed on his testimony. In view of the aforesaid, the learned Magistrate acquitted the appellant *vide* judgment dated 05.04.2016 in CC No. 789/2015 titled 'Irshad Ahmed v. Sukhe Singh @ Mahesh Master'.

6. Feeling aggrieved by the impugned judgment, the appellant has preferred the present appeal against the judgment of acquittal given by the learned Magistrate.

Submissions on behalf of the Appellant/Complainant

7. Learned counsel for the appellant contended that no receipt of payment was taken from the respondent as the payment was given in good faith as the



respondent was known to the appellant and was residing near his in-laws' home. It was submitted that the money which was given to the respondent by the appellant was from his annual savings. The appellant has contended that no one was with him when he had extended the alleged sum of money to the respondent or when the respondent handed over the cheques to him. It is the case of the appellant that the respondent was not able to rebut the presumption under Section 139 of the NI Act, which is in favour of the holder of the cheque i.e., the appellant.

8. Learned counsel for the appellant further contended that the respondent has not disputed the fact that he has not filled those cheques nor there is any suggestion made during the cross-examination of the appellant regarding this fact at the instance of the respondent. It is the case of the appellant that the respondent has not taken any active steps on his part regarding the non-return of signed cheques by the appellant including the registration of a complaint or any legal notice demanding the return of the alleged cheques for that matter. In addition to this, it was submitted that the respondent has raised a sole defence that the complainant had taken the cheques which were lying with Manoj Kumar (DW-1) and misused them. Moreover, he placed reliance on the testimony of Manoj Kumar (DW-1), the only defence witness examined by the respondent, and contended that Manoj Kumar (DW-1) had identified the cheques taken by the appellant from him during his examination and the respondent had not disputed the handing over of the cheques by Manoj Kumar (DW-1) to the appellant.



Submissions on behalf of the Respondent/Accused

9. Refuting the contentions of the appellant, the learned counsel for the respondent submitted that the appellant had not paid any money to the respondent. The appellant does not have any receipt to prove the payment of the alleged amount to the respondent nor he has shown any bank account or disclosed any other place from where he could have gotten the said amount which raises doubt regarding the financial capacity of the appellant to extend the alleged sum of money to the respondent. It is the case of the respondent that these cheques were lying with Manoj Kumar (DW-1) and the appellant took those cheques from him and misused them. The respondent came to know about the dishonour and misuse of the cheques only when he received the summons from the Court of learned Magistrate.

10. Learned counsel for the respondent further submitted that the respondent had rebutted the statutory presumption under Section 139 of the NI Act made against him at the beginning of the case and the burden to prove this case beyond any reasonable doubt was on the appellant. The appellant had not produced any witness or document to prove the payment of the alleged amount of money. Learned counsel for the respondent placed reliance on the testimony of the appellant in which he had not revealed the names of the persons to whom the respondent had allegedly sold the plot and where that alleged plot was situated. It is the case of the respondent that the cross-examination of the appellant had demolished his case, as his testimony did not appear to be believable and trustworthy.

Analysis and Findings

11. Heard learned counsel for the parties and perused the record.



12. To appreciate the case of the appellant (CW-1), it is pertinent to examine his cross-examination. The relevant portion of his cross-examination is reproduced below:

Cross-examination on 24.11.2011:

“..... At first, I contacted the accused in the month of May 2007 but I do not remember the exact date. I have not disclosed this fact to my counsel previously either at the time of filing of complaint or in my affidavit which is Ex. Cw1. I came to know prior to contact the accused that he had already sold two to three Bighas land to the persons dividing into plots but I do not know the names and addresses of those persons. The same was sold in the area Vijay Nagar, Ghaziabad, U.P. I came to know about selling the abovew said land from the accused. I had not verified the correctness of the above-said facts; however, 2 to 3 persons were sitting in the office of the accused for purchasing the plots. I do not know the name and address of the above said 2 to 3 person who were sitting at that time. I cannot say about the number and size of the plot for which I had gone to purchase. However, there were not any number of plots. Again, said the plot measured about 100 sq. yards. I only know the area of the plot; I cannot tell the length and width of the plot. It is correct that I have not mentioned in my complaint as well as in my affidavit for the purchase of land measurement i.e., 100 sq. yards.

I am engaged in the business of Dealer/ADHATI in Gazipur Subjimandi. I am an income Tax assessee. My yearly earning is about Rs.3-4 Lakhs. Monthly income fluctuate. My savings in a year rages from 60 thousands to One Lakhs. No one had accompanied me at the time when I went to the accused to make payment. Vol. Three to four persons were present at the time in the office of accused. I do not know them. I had given total Rs. 2,07,500/- to the accused in three installments. It is correct that there is no documentary proof of payment of money. I had given the money to the accused in good faith as he is known to me. The accused resides near my in-law's home.”

Cross-examination on 11.04.2012:

“I do not remember the exact date when I contacted to the accused in his house where 2/3 persons were present. It is wrong to suggest that no such incident was taken place that is why I do not remember the exact date. The rate of the plot was 2100/- per sq. yards. I do not remember whether



I told to my counsel or not at the time of preparing the complaint case, legal notice as well as in my statement by way of directions/surrounding of the plot at the time of purchasing the said plot. It is correct that I had not mentioned the amount in my Income Tax Return in the year 2007. It is wrong to suggest that I did not pay any amount to the accused therefore I had not mentioned in my Income Tax Return. I will try best to produced the record regarding the Income tax return of the year 2007 on the next date of hearing.

.... The amount which was given to the accused was the saving of 2/3 years. I have a bank account but I do not remember the number of the bank account. The name of the bank is SBI at Khureji, Delhi. The saving of my income was not deposited in the bank, but I keep at my house. At first, I gave Rs. One Lakh to the accused in the denomination of Rs.500/- , 100/-. I do not remember the number of the notes. The same was given to the accused in the presence of 2/3 persons in the office of the accused. I do not remember the exact number of the office but it is situated at East Vinod Nagar, near Gurudwara. Vol. At that time above said 2-3 persons were known to the accused.”

Cross-examination on 04.12.2012:

“.... I came to know after payment of money that the plot had been sold several times to other persons. I do not remember the dates on which I visited the site. I do not know as to who had previously purchased the plot. (Vol. the people. present on the site when I had visited the site told me that they had already purchased the plot). I do not know their names and addresses.

I cannot produce my income and expenditure account to show the source from which I purchased the plot. I had paid the money to accused which was accumulated through my regular savings of my business. I do not maintain the record of people, who do business with me.

It is wrong to suggest that I have not purchased any plot from accused or that I have made no payment to accused.

I had asked for return of my money from accused, 5-8 days after making the last payment on 7.7.2007. I do not remember the exact date. This fact is not mentioned in my complaint as well as my affidavit that I had asked for return of money after 5-8 days. (Vol. I may have disclosed the said fact to my advocate). I had gone to the house of accused to demand



money in Shakarpur Village. I do not know the house number and the name of land lord. (Vol. However, I can show the place, where the accused was residing on rent).

I do not remember the exact date on which the accused gave me the cheque, however, he had given the cheque 15-30 days prior to 30.01.2009. It was a postdated cheque.

I have not mentioned this fact that the cheque was given to me 15-30 days prior to the date of cheque in my complaint and affidavit. No one else was present at the time of giving of cheque. After dishonour the cheque, I called the accused on phone, thereafter, I also personally met him for return of my money.

I do not remember the date, month and year, when I talked with the accused regarding dishonour the cheque and I also do not remember the phone number. It is correct that the above said fact that after dishonour of four cheques when I met the accused, he told me that he (accused) was about to receive a cheque of Rs. 3,00,000/- and then I should represent all the four cheques) is not mentioned in my complaint, legal notice and affidavit. It is wrong to suggest that no such aforesaid incident took place and so, it is not mentioned in my complaint. It is wrong to suggest that the above said blank cheques were given to one Monoj Kumar S/o Sh. Dheeraj Singh, who is the friend of the accused. It is further wrong to suggest that the above said cheques were taken by me from Manoj (Vol. Cheques were handed over by the accused to me). It is wrong to suggest that I have misused the above said cheques in order to cheat the accused. I had not sent legal notice at the official address of the accused at Khichripur as the accused had already left the said office prior to the sending of the notice. I cannot tell the exact date, when I came to know that the accused has left the official address of Khichripur. The demand legal notice was received by the accused. I had not produced any delivery receipt regarding the service of legal notice.”

13. Considering the above evidence, the learned Trial Court held that the respondent was not guilty of the offence under Section 138 of the NI Act.



Moreover, the cross-examination of the appellant (CW-1) creates a doubt regarding the following facts:

- i. the case of the appellant that he had made payment to the respondent for the alleged purchase of the plot of land and the allegation that the said plot had been sold to other people as well and;
- ii. the financial capacity of the appellant to pay Rs. 2,07,000/- to the respondent.

14. During the proceedings, contentions were raised regarding the rebuttal of statutory presumptions raised against the accused under Section 139 read with Section 118 of the NI Act.

15. In matters pertaining to the dishonour of cheques, the question that a Court has to determine is whether the ingredients of the offence under Section 138 of the Act have been met and if so, whether the accused was able to rebut the statutory presumption as has been envisaged under Section 139 of the Act. However, this statutory presumption under Section 139 read along with Section 118 of the NI Act makes only a *prima facie* case in favour of the complainant at the threshold of the trial, at time of summoning and framing of notice under Section 251 of the Cr.P.C., but the same can be rebutted by the accused during the course of trial. It is the settled position of law that the accused need not prove his case beyond a reasonable doubt to dislodge these statutory presumptions, he can do so by making a proper case based on the preponderance of probabilities.

16. The Hon'ble Supreme Court, in **Rangappa v. Sri Mohan, (2010) 11 SCC 441** wherein the primary question which had arisen for consideration was with respect to the proper interpretation of Section 139 of the NI Act



which shifts the burden of proof on to the accused in respect of cheque bounce cases and to clarify the manner in which this statutory presumption can be rebutted, has observed and held as under:

“27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard or proof.

28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. **Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of “preponderance of probabilities”. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.”**

(emphasis supplied)

17. Further, the Hon’ble Supreme Court in **Kumar Experts v. Sharma Carpets, (2009) 2 SCC 513** has held as under:

“20. The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond



reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. **To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist.** Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under Sections 118 and 139 of the Act.”

(emphasis supplied)

18. It is pertinent to note that to draw the presumption under Section 118 read with Section 139 of the NI Act, post framing of notice under Section 251 of the Cr.P.C., the burden heavily lies upon the complainant to show that he had requisite funds for having advanced the money to the accused. The essential ingredients of Section 138 of the NI Act itself make it incumbent upon the complainant to reveal the sources from where he had arranged funds for which the cheque was issued. The Hon’ble Supreme Court in **John K. Abraham v. Simon C. Abraham, (2014) 2 SCC 236** has observed and held as under:



“9. It has to be stated that in order to draw the presumption under Section 118 read along with Section 139 of the Negotiable Instruments Act, the burden was heavily upon the complainant to have shown that he had the required funds for having advanced the money to the accused; that the issuance of the cheque in support of the said payment advanced was true and that the accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant.”

19. Keeping the aforesaid statutory requirements in mind, facts of the present case which have come on record during the course of cross-examination demonstrate that the appellant was not aware of the date when the substantial sum of Rs. 2,07,000/- was advanced by him in cash to the respondent and moreover, he was also not aware that when and where the transaction took place. The details of the transaction pertaining to the purchase of the said plot of land and the source of payments for which the alleged cheques were issued by the respondent could not be satisfactorily proved on record.

20. It is pertinent to note here that the appellant has also exhibited his bank account statement (Ex. CW2/A) through the clerk of the bank (CW-2). The said bank statement, in fact, did not show any entry in his bank account reflecting the withdrawal of any amount during the relevant period which creates reasonable doubt about the consideration for the cheque in question and whether he had enough funds in his account to extend the alleged sum of money as sale price to the respondent for the alleged purchase of the plot of land.

21. In similar factual circumstances, wherein the complainant had not been able to prove the source of money to extend an alleged friendly loan to the



accused, a learned Single Judge of this Court in **Satish Kumar v. State NCT of Delhi & Anr., 2013 SCC OnLine Del 2963** observed and held as under:

“15. It is in the aforesaid context that the learned ASJ had concluded that the petitioner/complainant had failed to prove his case against the respondent No. 2 beyond reasonable doubt and therefore respondent No. 2 ought to have been acquitted for the offence under Section 138 of the Negotiable Instruments Act. This Court is inclined to concur with the decision of the appellate court of overturning the judgment of the learned MM. The said decision is based on a logical appreciation of the evidence placed on record. In fact, the learned trial court had erred in concluding that the respondent No. 2 had not been able to discharge the initial onus placed upon him to show the existence of a reasonably probable defence in his favour. On the contrary, the records summoned by the respondent No. 2 from his bank and the deposition of DW-2 (clerk from the Bank) were themselves sufficient to hold that the respondent No. 2 had been able to raise a plausible defence and the notices issued by him to his banker on 18.1.2002 and 3.2.2002 much prior to issuance of the demand notice issued by the petitioner on 26.3.2002, also substantiated the said defence. However, once the burden of proof had shifted back to the petitioner/complainant, he was unable to prove his case beyond reasonable doubt by establishing the source of the alleged friendly loan extended to the respondent No. 2, thus disentitling him to the grant of relief on the basis of the negotiable instrument.”

22. Therefore, in view of the contradictions in the testimony of the appellant pointed out hereinabove and the view taken by the Hon’ble Supreme Court in **John K. Abraham v. Simon C. Abraham (supra)**, the appellant, in this case, has not been able to discharge the burden of proof required to draw the presumption provided under Sections 139 read with 118 of the NI Act post framing of notice under Section 251 of the Cr.P.C. This also creates doubt in the version of the appellant and raises doubt whether he had the requisite funds for having advanced the money to the respondent for the purchase of the alleged plot of land. Hence, the obvious conclusion would



then be, as the learned Magistrate has also rightly concluded, that the respondent has succeeded in rebutting the presumption under Sections 139 read with 118 of the NI Act post framing of notice under Section 251 of the Cr.P.C. He had successfully proved that the cheques were not issued by him in the discharge of any legally enforceable debt or liability as required to prove the offence under Section 138 of the NI Act. Therefore, no offence under Section 138 of the NI Act has been made out against the respondent/accused in the present case. In the present case, the appellant has raised the issue that the respondent has not taken a defense that the writing on the impugned cheques do not belong to him. It is to be noted that no specific plea with regard to this fact has been taken by the respondent in reply to the notice under Section 251 of the Cr.P.C. and as well as during his examination under Section 313 of the Cr.P.C. However, when the foundational facts which could not established by the appellant as discussed hereinbefore, this would not have any material effect. The respondent has been able to demonstrate his defence from testimony of appellant and material on record placed by the latter.

23. At this stage, since the present appeal is an appeal against acquittal, it is to be borne in mind that the powers of the appellate court in an appeal against acquittal under Section 378 of the Cr.P.C. are to be exercised only where it is shown that the findings in judgment are incorrect or perverse in law. The approach of the appellate court in the appeal against acquittal has been dealt with by the Hon'ble Supreme Court in **Murlidhar v. State of Karnataka, AIR 2014 SC 2200: (2014) 5 SCC 730.**



24. The Hon'ble Supreme Court in **Murlidhar** (*supra*), after referring to various decisions, has culled out the principles relating to appeals from a judgment of acquittal. The Hon'ble Supreme Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

- “12.(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;
- (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;
- (iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are 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, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and
- (iv) Merely because the appellate court on reappreciation 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. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.”

25. The same view has been reiterated by the Hon'ble Supreme Court recently in **Basheera Begum v. Mohd. Ibrahim**, (2020) 11 SCC 174 as follows:

- “190. At the cost of repetition, it is reiterated that the burden of proving an accused guilty beyond all reasonable doubt lies on the prosecution. If upon analysis of evidence two views are possible, one which points to



the guilt of the accused and the other which is inconsistent with the guilt of the accused, the latter must be preferred. Reversal of a judgment and order of conviction and acquittal of the accused should not ordinarily be interfered with unless such reversal/acquittal is vitiated by perversity. In other words, the court might reverse an order of acquittal if the court finds that no person properly instructed in law could have upon analysis of the evidence on record found the accused to be “not guilty”. When there is circumstantial evidence pointing to the guilt of the accused, it is necessary to prove a motive for the crime. However, motive need not be proved where there is direct evidence. In this case, there is no direct evidence of the crime.

191. In *Sadhu Saran Singh v. State of U.P.*, this Court observed that an appeal against acquittal has always been on an altogether different pedestal from an appeal against conviction. In an appeal against acquittal, where the presumption of innocence in favour of the accused is reinforced, the appellate court would interfere with the order of acquittal only when there is perversity. In this case, it cannot be said that the reasons given by the High Court to reverse the conviction of the accused are flimsy, untenable or bordering on perverse appreciation of evidence.”

26. Moreover, the Hon’ble Supreme Court in **N. Vijayakumar v. State of Tamil Nadu, (2021) 3 SCC 687** has observed that an appellate court must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principal of criminal jurisprudence and *secondly*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the learned Trial Court and held that 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 learned Trial Court. The observations of the Hon’ble Supreme Court are as follows:

“20. Mainly it is contended by Shri Nagamuthu, learned Senior Counsel appearing for the appellant that the view taken by the trial court is a



“possible view”, having regard to the evidence on record. It is submitted that the trial court has recorded cogent and valid reasons in support of its findings for acquittal. Under Section 378 CrPC, no differentiation is made between an appeal against acquittal and the appeal against conviction. By considering the long line of earlier cases this Court in the judgment in *Chandrappa v. State of Karnataka* [*Chandrappa v. State of Karnataka*, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] has laid down the general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal. Para 42 of the judgment which is relevant reads as under: (SCC p. 432)

“42. From the above decisions, in our considered view, the following general principles regarding powers of the 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 emphasise 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.
- (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 is 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.”

21. Further in the judgment in *Murugesan* [*Murugesan v. State*, (2012) 10 SCC 383 : (2013) 1 SCC (Cri) 69] relied on by the learned Senior



Counsel for the appellant, this Court has considered the powers of the High Court in an appeal against acquittal recorded by the trial court. In the said judgment, it is categorically held by this Court that only in cases where conclusion recorded by the trial court is not a possible view, then only the High Court can interfere and reverse the acquittal to that of conviction. In the said judgment, distinction from that of “possible view” to “erroneous view” or “wrong view” is explained. In clear terms, this Court has held that if the view taken by the trial court is a “possible view”, the High Court not to reverse the acquittal to that of the conviction.”

(emphasis supplied)

27. Therefore, in view of the settled position of law that if two views are possible then one favouring the accused should be taken, the present appeal against the impugned judgment is not liable to be interfered with.

28. In view of the facts and the circumstances, this Court is of the opinion that there is no illegality, perversity, or mis-appreciation of facts in the impugned judgment passed by the learned Magistrate.

29. The present appeal is accordingly dismissed and disposed of accordingly.

30. Pending applications, if any, also stand disposed of.

31. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
JUDGE

DECEMBER 11, 2023/sn