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CRL. A. No. 123/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.06.2024

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NO.123 OF 2021

Intelligence Officer
Narcotics Control Bureau
Chennai Zonal Unit
Chennai – 90.

.. Appellant

- Vs -

Kenneth Stanley @ Ken

.. Respondent

Criminal Appeal filed u/s 378 Cr.P.C. against the judgment dated
11.12.2020 made in C.C. No.47/2020 on the file of the Principal Special Judge,
Principal Special Court under EC & NDPS Act, Chennai.

For Appellant	:	Mr. N.Ramesh, Spl. PP For NCB Cases
For Respondent	:	No Appearance

JUDGMENT



CRL. A. No. 123/2021

WEB COPY

Aggrieved by the order of acquittal dated 11.12.2020 passed by the learned Special Judge, Special Court for EC & NDPS Act in C.C. No.47/2014, the present appeal has been preferred by the prosecution.

2. It is the case of the prosecution/appellant that based on information received on 27.01.2014 that M/s.Aramex India Pvt. Ltd. Ekattuthangal, Chennai, has received two international consignment for carriage under Airway Bill No.3381638315 dated 23.1.2014 for onward transfer to South Africa and another Airway Bill No.3381638326 dated 23.01.2014 for onward transfer to Canada and both consignments were declared to be bangles, the Intelligence Officer went to the spot and upon identification of the accused and after enquiry arrested the accused for the offences u/s 21 (c), 23 (c), 28 & 29 of the NDPS Act, 1985.

3. The complaint was taken on file and upon cognizance the case was committed to the Special Court under the NDPS Act after furnishing copies of documents relied upon by the prosecution to the accused u/s 207 Cr.P.C.



CRL. A. No. 123/2021

WEB COPY

Charges were framed against the accused u/s 8 (c) r/w 21 (c), 8 (c) r/w 28 of NDPS Act and the accused was tried for the offences.

4. To prove the case, the prosecution examined P.W.s 1 to 7 and marked Exs.P-1 to P-40 and M.O.s 1 to 12. On the side of the accused, neither any oral evidence nor any documentary evidence was marked. Upon appreciation of the evidence, the trial court held the accused not guilty of the charges framed and, accordingly, acquitted the accused, aggrieved by which the present appeal has been preferred.

5. When the matter is taken up for hearing, learned Special Public Prosecutor appearing for the appellant submitted that upon acquittal, the respondent, being a South African national, had left India and his whereabouts are not known and the appellant is not able to serve notice on the respondent. However, he submits that the appellant has a good case for conviction and, therefore, time may be granted to take steps to trace the respondent and serve notice.



CRL. A. No. 123/2021

WEB COPY

6. This Court gave its careful consideration to the submission made by the learned Special Public Prosecutor and perused the materials available on record.

7. Time and time again, the scope and power of the High Court to interfere with an order of acquittal recorded by the trial court has been highlighted by the Supreme Court and recently in ***Babu Sahebagouda Rudragoudqr & Ors. – Vs – State of Karnataka (C.A. No.985/2010 – Date – 19.04.2024)***, the Supreme Court had captured the ratio succinctly, which have to be followed in an appeal against an order of acquittal and for refreshing the law, the same is quoted hereunder :-

*37. This Court in the case of **Rajesh Prasad v. State of Bihar and Anr. (2022 (3) SCC 471)** encapsulated the legal position covering the field after considering various earlier judgments and held as below: -*

*“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: **(Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]***



WEB COPY



CRL. A. No. 123/2021

“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, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 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



WEB COPY



CRL. A. No. 123/2021

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.”

38. Further, in the case of **H.D. Sundara & Ors. v. State of Karnataka (2023 (9) SCC 581)** this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappraise the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappraising the evidence, is required to consider whether the view taken by the trial court is a possible view which



WEB COPY



CRL. A. No. 123/2021

could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.



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40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.”

(Emphasis Supplied)

8. Thus, from the aforesaid proposition of law, it is beyond a cavil of doubt that the power of this Court is not curtailed or limited, as it is within its realm to reappraise the evidence available on record to render a finding. However, in reappraising the evidence, this Court has to see whether the view taken by the trial court could not be taken by any prudent man on appreciating the materials available before it. If the view taken by the trial court, considered overall on the materials placed, is just and reasonable that the view taken by the trial court is on proper appreciation of the materials, the High Court cannot interfere with the acquittal on the ground that another view is possible.

9. From the above proposition, it is clear that the innocence of the accused is strengthened by the fact that acquittal has been recorded in favour of the accused and normally the appellate court shall not interfere with the



CRL. A. No. 123/2021

WEB COPY

same unless materials which clearly establish the guilt of the accused and the findings that could be rendered by the appellate court would only lead to conviction.

10. However, in the present case, the respondent has been acquitted by the trial court and the presumption of innocence gets strengthened upon the acquittal of the respondent. Further, in the present case, upon acquittal, the respondent has left the country and his whereabouts are not known and, if really the respondent intended to file appeal, no steps were taken by the appellant to see to it that the respondent does not leave the country. In such a scenario, the respondent having left the country and his whereabouts could not be traced, as has been submitted on behalf of the appellant, no useful purpose would be served in holding the appeal on file by giving opportunity to the appellant to trace the respondent and serve notice.

11. In view of the reasons recorded above, no purpose would be served in keeping the case on file and, accordingly, the same is dismissed confirming



CRL. A. No. 123/2021

WEB COPY

the judgment of acquittal recorded by the Special Court for EC & NDPS Act,
Chennai, in C.C. No.47/2014.

13.06.2024

Index : Yes / No

GLN

To

1. The Special Judge
Special Court for EC & NDPS Act
Chennai.
2. Intelligence Officer
Narcotics Control Bureau
Chennai Zonal Unit
Chennai – 90.
3. The Special Public Prosecutor
NCB Cases, High Court
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WEB COPY 1.



CRL. A. No. 123/2021

M.DHANDAPANI, J.

GLN

CRL. A. NO.123 OF 2021

13.06.2024



WEB COPY



CRL. A. No. 123/2021