



Crl.A.No.194 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.194 of 2021

C.Suresh
S/o.Cherma Durai

... Appellant

Vs.

K.Vanamurugan
S/o.Kamaraj

... Respondent

PRAYER : Criminal Appeal filed under Section 378 of the code of Criminal Procedure, against the judgment dated 06.07.2020 passed by learned III Additional District and Sessions Judge, Coimbatore, in Crl.A.No.281 of 2017 reversing the judgment dated 16.08.2017 passed by the learned Judicial Magistrate, Sulur, in C.C.No.802 of 2017.

For Appellant	:	Mr.A.Sriram
For Respondent	:	Mr.W.Camyles Gandhi



CrI.A.No.194 of 2021

WEB COPY

J U D G M E N T

This appeal arises against the judgment dated 06.07.2020 passed by learned III Additional District and Sessions Judge, Coimbatore, in CrI.A.No.281 of 2017 reversing the judgment dated 16.08.2017 passed by the learned Judicial Magistrate, Sulur, in C.C.No.802 of 2017.

2. The appellant/complainant moved a prosecution informing that respondent/accused borrowed a hand loan of Rs.1,50,000/- from him on 10.03.2013 for his urgent family expenses and agreed to repay the same within a month. After repeated demands made by the appellant/complainant, the respondent issued a cheque bearing No.135144 dated 22.05.2013 drawn on State Bank of India, Arumuganeri Branch, towards repayment thereof, which on presentation was returned unpaid for the reason 'insufficient funds'. Following the procedure envisaged u/s.138 of the Negotiable Instruments Act, appellant/complainant has preferred a complaint and the same was taken on file in C.C.No.802 of 2017 on the file of learned Judicial Magistrate, Sulur, Coimbatore.



Crl.A.No.194 of 2021

WEB COPY

3. Before trial Court, appellant/complainant examined himself and marked 5 exhibits. One witness was examined on the side of defence and no exhibits were marked. On appreciation of materials before it, trial Court, under judgment dated 16.08.2017, convicted the respondent and sentenced him to undergo six months simple imprisonment and to pay a fine of Rs.3,000/- in default, three months simple imprisonment. There against, the respondent preferred an appeal in Crl.A.No.281 of 2017 on the file of III Additional District and Sessions Judge, Coimbatore, which was allowed by judgment dated 06.07.2020 and the respondent was acquitted from all charges. Challenging the same, the present appeal has been filed.

4. Heard the learned counsel for the appellant and learned counsel for respondent.

5. Time and time again, the scope and power of the High Court to interfere with an order of acquittal recorded by the Court below has been highlighted by the Supreme Court and recently in ***Babu Sahebagouda***



Rudragoudar & Ors. – Vs – State of Karnataka (C.A. No.985 of 2010 – dated – 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]***

"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 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 reappreciate the oral and documentary evidence;

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

40. *The appellate Court, in order to interfere with*



CrI.A.No.194 of 2021

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)

6. 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 reappreciate the evidence available on record to render a finding. However, in reappreciating the evidence, this Court has to see whether the view taken by the Court below could not be taken by any prudent man on appreciating the materials available before it. If the view taken by the Court below, considered overall on the materials placed, is just and reasonable that the view taken by the Court below is on proper appreciation of the materials, the High Court cannot interfere with the acquittal on the ground that another view is possible.

7. In light of the above legal principles enunciated by the Apex Court, this Court will now proceed to analyse the evidence on record to find



CrI.A.No.194 of 2021

WEB COPY

out whether the view arrived at by the Court below is based on the materials available on record or whether there are materials, which warrants grant of leave by this Court.

8. In acquitting the respondent, the Court below has reasoned that (i) the respondent/accused has established that he borrowed a sum of Rs.40,000/- from one Janarthanan and the subject cheque was given to him as security, which was misused by the appellant/complainant, through the evidence of DW-1, father of the said Janarthanan. The evidence of DW-1 was to the effect that the respondent/accused borrowed money from his son Janarthanan and after discharge of his liability, the subject cheque has not been returned to him. DW-1 was an independent witness and that he is the father of the said Janarthannan is not in dispute. The appellate Court found that the trial Court has not properly appreciated the evidence of DW-1, it, merely took into consideration the evidence of DW-1 to the effect that the transaction was of the year 2007 and not in the year 2012. Just because DW-2 has deposed that the



CrI.A.No.194 of 2021

transaction was of the year 2007 and not in the year 2012, it would not render his evidence unbelievable since he has specifically identified Ex.P1-cheque and deposed that the subject cheque was given by respondent to his son Janarthanan. Therefore, the evidence of DW-1 could not be thrown away since there was some variation in the year.

- (ii) It was the case of the respondent that the appellant/complainant has received the cheque from Janarthanan through Shanmugha Sundaram and has filed this case. PW-1, during cross-examination, has admitted that the said Shanmugha Sundaram was his relative. However, PW-1 did not choose to examine him to falsify the case of the respondent. The finding of the trial Court that the respondent has failed to take any steps to get back the cheque from Janarathanan, was not sustainable since the respondent has repaid the amount and the Janarathanan has also died. Hence, the respondent would not have foreseen such death and that the cheque would be misused at a later point of time.

9. On the above reasoning and for some other reasons, the Court



Crl.A.No.194 of 2021

below has held that the respondent has proved his defence through evidence.

Hence, the finding of the trial Court holding the respondent guilty of offence u/s.138 of the Negotiable Instruments Act cannot be accepted and accordingly, acquitted the respondent from all charges. This Court does not find any reason to interfere with the judgment of the Court below acquitting the accused.

10. Accordingly, this Criminal Appeal is dismissed.

02.07.2024

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji

To

1.The III Additional District and Sessions Judge,
Coimbatore.



CrI.A.No.194 of 2021

WEB COPY

2. The Judicial Magistrate, Sulur.

3. The Public Prosecutor,
Madras High Court,
Madras.



WEB COPY



Crl.A.No.194 of 2021

M.DHANDAPANI, J.

vji

Crl.A.No.194 of 2021

02.07.2024