



WEB COPY



CrI.A.No.302 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CrI.A.No.302 of 2021

M/s.Saree Mandir
Represented by its Power Agent
M.Balraj
S/o.Muthukrishnan
Door No.132, Sukrawarpet,
Coimbatore - 641 001.

... Appellant

Vs.

K.Shankar

... Respondent

PRAYER : Criminal Appeal filed under Section 378 of the code of Criminal Procedure, against the judgment of acquittal dated 28.02.2020 in C.C.No.823 of 2017 passed by the Judicial Magistrate (Fast Track Court No.2), Coimbatore.

For Appellant	:	Mr.T.Ganesan
For Respondent	:	No appearance



CrI.A.No.302 of 2021

WEB COPY

J U D G M E N T

This appeal arises against the judgment of acquittal passed by learned Judicial Magistrate (Fast Track Court No.2), Coimbatore, passed in C.C.No.823 of 2017, dated 28.02.2020.

2. The appellant/complainant moved a prosecution informing that respondent/accused borrowed a sum of Rs.1,63,366/- from him and issued a cheque bearing No.058379 dated 27.09.2016 drawn on Tamil Nadu Mercantile Bank, Poonsolai 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.823 of 2017 on the file of learned Judicial Magistrate (Fast Track Court No.2), Coimbatore.

3. Before trial Court, appellant/complainant examined himself and marked 7 exhibits. None were examined on the side of defence and no



CrI.A.No.302 of 2021

exhibits were marked. On appreciation of materials before it, trial Court, under judgment dated 28.02.2020, acquitted the respondent. There against, the present appeal has been filed.

4. Heard the learned counsel for the appellant. There is no appearance 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 trial court 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: -*



WEB COPY



CrI.A.No.302 of 2021

*“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*



CrI.A.No.302 of 2021

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



CrI.A.No.302 of 2021

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 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 reappraise the evidence available on record to render a



CrI.A.No.302 of 2021

WEB COPY

finding. However, in reappreciating 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.

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 out whether the view arrived at by the trial court 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 trial Court has reasoned that though the respondent/accused has not cross-examined the appellant/complainant, he has filed a petition to reopen the



Crl.A.No.302 of 2021

cross-examination of the appellant/complainant and the same was allowed.

However, the appellant/complainant has not subjected himself for cross-examination. In such circumstances, the trial Court found that though sufficient opportunity has been given to the appellant/complainant to establish his case, he has failed to utilize the same by not subjecting himself for cross-examination. Hence, the appellant/complainant has not proved his case beyond reasonable doubt. For the aforesaid reasons, the trial Court acquitted the accused. This Court finds no error in the reasoning given by the trial Court in acquitting the accused.

9. Accordingly, this Criminal Appeal is dismissed.

18.04.2024

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji



CrI.A.No.302 of 2021

To
WEB COPY

The learned Judicial Magistrate
(Fast Track Court No.2),
Coimbatore.



WEB COPY



Crl.A.No.302 of 2021

M.DHANDAPANI, J.

vji

Crl.A.No.302 of 2021

18.04.2024