



Crl.A.No.434 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2022

CORAM

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

Criminal Appeal No.434 of 2021

M/s.L.G.Balakrishnan & Bros Limited,
Represented by its
Company Secretary
M.Lakshmikanth Joshi,
Having its Registered Office,
at 6/16/13, Krishnarayapuram Road,
Ganapathy, Coimbatore - 641 006.

... Appellant

Versus

1. M.Kaliappan

2. Kavitha Kaliappan

... Respondents

Prayer: The Criminal Appeal has been filed under Section 378 of Criminal Procedure Code, against the judgment in C.C.No.383 of 2016, dated 01.02.2021 passed by the learned Judicial Magistrate, Fast Track Court No.1 at Magisterial Level, Coimbatore, wherein the learned Judicial Magistrate has acquitted the accused under Section 255(1) Cr.P.C.



Crl.A.No.434 of 2021

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For Appellant : Mr.S.Ramachandran

For Respondents : Mr.T.Balaji

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J U D G M E N T

The present Criminal Appeal has been filed against the judgment in C.C.No.383 of 2016, dated 01.02.2021 passed by the learned Judicial Magistrate, Fast Track Court No.1 at Magisterial Level, Coimbatore, wherein the learned Judicial Magistrate has acquitted the accused under Section 255(1) Cr.P.C.

2. The case of the prosecution is that the appellant/Company is a Public Limited Company incorporated under the Indian Companies Act, 1956, and the said Company has passed a resolution on 22.05.2009 to take appropriate steps as against the accused persons for committing misappropriation of funds from the appellant/Company. M/s.Karthick Engineering Works is a proprietary concern, wherein the first accused is



Crl.A.No.434 of 2021

actively involved in the day-to-day activities and the second accused is a proprietrix. The second accused along with first accused were doing job works with the company for the past several years. As per the statements of accounts maintained by the appellant/company in the usual course of business, the accused received excess payment bill to the tune of Rs.87,77,247.18/- and when it was enquired by the appellant/company, the first accused came to the office of the appellant and admitted about the inflation of bills and misappropriation committed by them and agreed to discharge the liability vide a letter dated 20.06.2009 and issued five cheques bearing Nos.611384, 611385, 611386, 611387 and 611388 to the tune of Rs.10,00,000/- each totally Rs.50,00,000/- and the same were presented for collection on 29.06.2009 and on 30.06.2009, the same were returned with an endorsement "Stop Payment" and thereby, the appellant/company issued a legal notice on 19.07.2008 to the accused and after completing the formalities, the appellant/company filed a complaint before the trial Court under Section 138 of the Negotiable Instruments Act against the respondents/accused and the same has been ended in acquittal. Challenging the same, the present Criminal Appeal is filed.



Crl.A.No.434 of 2021

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3. To prove the case as against the respondents, the appellant/ Company examined P.W.1 and marked Ex.P1 to Ex.P18. On behalf of the respondents/accused, they examined D.W1 to D.W.20 and marked Ex.D1 to Ex.D6 Series.

4. The trial Court has rejected the contention of the petitioner that there is no legally enforceable debt or liability and admitted the plea of defence raised by the accused and the same was ended in acquittal, which is not sustainable on a simple ground that the accused admitted the signature of the instrument. When such deemed admission on behalf of the accused persons, the presumption raised in favour of the appellant and the same was not reverted by the accused in a proper manner by adducing the documents. However, the trial Court dismissed the complaint and acquitted the accused persons. Accordingly, the learned counsel for the appellant prays for allowing this appeal.



Crl.A.No.434 of 2021

WEB COPY

5. The learned counsel appearing for the respondent would respondent that there is no valuable ground available to interfere with the order passed by the trial Court. In the present case, the appellant claimed that as if the respondents/accused went to the appellant Company and given a written letter dated 20.06.2009 and issued cheques. However, mere issuance of letters at the instigation of the appellant Company, would not amount to acknowledgement of the liability or debt and the said letter was obtained by threat and coercion, thereby, the respondents/accused made a police complaint on 25.06.2009 on the file of the Inspector of Police, Annur Police Station, and the same was marked as Ex.P13 and subsequently, a legal notice was issued on 27.06.2009, which was marked as Ex.P14. Apart from that the Law Enforcing Agency completed investigation and filed a charge sheet in C.C.No.299 of 2010 on the file of the Judicial Magistrate and the same was marked as Ex.D15. Apart from that, the very same amount, which is the subject matter of the Calender Case, the appellant filed a suit in O.S.No.822 of 2009 on the file of the First Additional District



Crl.A.No.434 of 2021

Judge, Coimbatore, and the same was dismissed and apart from that, the respondents/accused had also filed a suit in O.S.No.562 of 2009 on the file of the Principal District Judge, Coimbatore, and the suit was decreed, as against which, the appellant Company preferred an appeal before this Court in A.S.No.738 of 2019. However, no appeal was filed against the decree granted in favour of the respondents/accused. All those grounds are elaborately considered by the trial Court and the same was ended in acquittal, which cannot be interfered by this Court. Hence, he prays for dismissal of this appeal.

6. This Court gave its anxious consideration to the submission made by the learned counsel for the petitioner and the respondents 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 Rudragoudar & Ors. – Vs – State of Karnataka (C.A. No.985/2010 – Date***



Crl.A.No.434 of 2021

– 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



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Crl.A.No.434 of 2021

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.



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Crl.A.No.434 of 2021

(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



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Crl.A.No.434 of 2021

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 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.



Crl.A.No.434 of 2021

WEB COPY

9. 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.

10. A perusal of the materials on record reveals that the respondents had denied knowledge of the petitioner. In fact, it is the specific case of the respondent that due to coercion and threat, the cheques in question were obtained from the first respondent. In this regard, the court below had gone in extenso into the deposition of the witnesses on both sides, both in chief and cross and had also taken note of the decree obtained by the respondent in the suit which has not been challenged and the suit filed by the appellant, which has been dismissed and had rendered a finding that the amount alleged to have been given by the petitioner to the respondent have not been established through documentary evidence.



Crl.A.No.434 of 2021

Further finding has been rendered by the court below that there is no material to show the reason for issuance of the cheques by the respondent when there is no legally enforceable debt which has been established and in the absence of any proof of the fact that there is a legally enforceable debt which the respondents have to pay to the petitioner, the fact that the respondents have raised a probable theory of threat and coercion and rebutted the presumption mentioned under Section 139 of the Act, duty is cast upon the petitioner to establish the subsistence of a legally enforceable debt and the liability of the respondent to discharge the same and the petitioner having not filed any proper document to establish the same, the court below was fully justified in rejecting the complaint filed by the petitioner.

In the afore-stated circumstances, no case is made out by the petitioner for interfering with the judgment of acquittal and accordingly, this Criminal Appeal is dismissed.

04.06.2024

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Crl.A.No.434 of 2021

M. DHANDAPANI, J.

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To

1. The Judicial Magistrate,
Fast Track Court No.1 at Magisterial Level, Coimbatore.
2. The Public Prosecutor,
High Court of Madras, Chennai.

Criminal Appeal No.434 of 2021

04.06.2024