



CRL.A. No.637/2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATE : 13.06.2024**

**CORAM**

**THE HONOURABLE MR. JUSTICE M.DHANDAPANI**

**CRL. A. NO.637 OF 2022**

N.R.Imayavaramban

.. Appellant

**- Vs -**

1. V.Duraisamy (Died)
2. D.Sivakumar
3. S.Kannan
4. C.Radha

5. The State, rep. By  
The Public Prosecutor  
Coimbatore.

.. Respondents

Criminal Appeal filed u/s 378 Cr.P.C. praying this Court to allow the appeal and set aside the order passed by the Hon'ble Judicial Magistrate No.III, Coimbatore in C.C. No.84/2010 and convict the accused.

For Appellant : Mr. I.M.Siddartha Ramarajan

For Respondents : No Appearance

**JUDGMENT**



CRL.A. No.637/2022

WEB COPY

The present appeal is directed against the order of acquittal passed by the learned Judicial Magistrate No.III, Coimbatore in C.C. No.84/2010 in and by which the trial court acquitted the accused of the charges u/s 454,380, 209, 406 and 463 IPC vide judgment dated 15.11.2018.

2. The brief facts necessary for the disposal of the present appeal is as under :-

It is the case of the appellant that the property, which is the subject matter of dispute, belongs to the appellant. The appellant had obtained loan in a sum of Rs.2,50,000/- from the respondents , who are related to the appellant through his paternal uncle's son. Towards the said loan, the appellant had issued various cheques in the name of all the respondents including some blank cheques. The appellant had also affixed his signature in two blank stamp papers of Rs.10/- and also in one stamp paper of Rs.1/- denomination. The said documents were given by the appellant on account of trust reposed on the respondents, as they are related to the appellant.



CRL.A. No.637/2022

WEB COPY

3. It is the further case of the appellant that inspite of the payment of the amounts along with interest at 24% by way of cash, as asked for by the 1<sup>st</sup> respondent for the purposes of income tax, the documents, which were given as security by the appellant were not returned and inspite of repeated demands by the appellant the same were not returned. However, the appellant was threatened to pay 48% interest else the documents which he had not given would not be parted with. Inspite of the appellant seeking the help of the police authorities, no action was taken by the law enforcing agency. It is the further case of the appellant that the respondents tried to take control of the subject property, but due to the intervention of persons known to the appellant, the same was thwarted.

4. It is the further case of the appellant that for safeguarding his right over the subject property, the appellant filed O.S. No.462/20020 seeking permanent injunction restraining the respondents from interfering with his peaceful possession of the property in which the court appointed Advocate Commissioner. Inspite of the same, the respondents continued with their interference over the subject property and had trespassed into the property



CRL.A. No.637/2022

by breaking open the lock and taking the belongings of the appellant and, therefore, left with no alternative, the appellant filed private complaint before the court below which was taken on file by the Judicial Magistrate No.1, Coimbatore.

5. Upon taking cognizance of the complaint, summons were issued to the respondents and upon their appearance the documents were provided to the respondents and the case was taken on file in C.C. No.371/2000 for the offences u/s 209, 380, 406, 442 and 463 IPC. On the side of the appellant P.W.s 1 and 2 were examined and Exs.P-1 to P-50 were marked and M.O.s 1 to 5 were marked. On the side of the defendants the 4<sup>th</sup> respondent was examined as D.W.1 and Exs.D-1 to D-6 were marked.

6. The Court below, after considering the oral and documentary evidence held that the appellant has not proved its case and, accordingly acquitted the respondents 2 to 4 of the charges while the charge against the 1<sup>st</sup> respondent was dismissed as having abated, as the 1<sup>st</sup> respondent died



CRL.A. No.637/2022

WEB COPY

pending the trial. Aggrieved by the said acquittal of the respondents, the appellant has filed the present appeal.

7. Learned counsel appearing for the appellant submitted that the whole case was premised on a lease agreement alleged to have been entered into between the appellant and the respondent, however, the trial court had not assessed the probability of a forged lease agreement by the respondent, as the appellant had not executed any lease agreement at any point of time.

8. It is the further submission of the learned counsel that the trial court failed to consider that the 1<sup>st</sup> respondent, being a stamp vendor, had misused his official position and aided in creating false document by fabricating false entries and against the said act, complaint had been given and the licence of the 1<sup>st</sup> respondent had been suspended, but the said aspect was not considered by the trial court.

9. It is the further submission of the learned counsel that the respondents, being relatives of his paternal uncle's son, had tried to usurp the



CRL.A. No.637/2022

WEB COPY

property by creating false documents, but the said act was not properly considered by the court below while considering the documentary evidence and, therefore, the judgment passed by the court below requires interference.

10. Though notice was served on the respondents, however they have neither chosen to appear in person nor through counsel. In view of the fact that the appeal is of the year 2022 and as no adverse order is to be passed against the respondents, the appearance of the respondents either in person or through counsel is not required and, therefore, this Court proceeds to analyse the case on the materials available before it.

11. 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 Sahebagoada Rudragoudar & 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 :-



WEB COPY



CRL.A. No.637/2022

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, reappraise 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



WEB COPY



CRL.A. No.637/2022

*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



WEB COPY

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



WEB COPY

*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)*

12. 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 trial court could not be taken by any prudent man on appreciating the materials available before it. If the view taken by the trial



CRL.A. No.637/2022

WEB COPY

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.

13. 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 interference with the order passed by the court below.

14. There is no dispute with regard to the subject property, as it belongs to the appellant. Though the appellant has raised grievances with regard to the holding of the documents pertaining to the appellant by the respondents and the trespass committed by the respondents into the subject property and taking away certain documents pertaining to the appellant, however, the whole case is based on the lease agreement, which is alleged to have been entered into between the appellant and the respondents as



CRL.A. No.637/2022

WEB COPY

projected by the respondents and on the basis of the lease agreement, the right vests on the respondents to enter into the property and therefore, there is no trespass.

15. A perusal of the order passed by the trial court reveals that the trial court has gone into the materials placed before it while rendering its finding that the case against the respondents have not been made out. In coming to the said conclusion, the trial court has based its findings on the suit for permanent injunction and interim injunction in O.S. No.462/2000, which was filed by the appellant and has rendered a finding that the said suit was dismissed as early as in the year 2003, which has been admitted by the appellant in his deposition. The court below has recorded a further finding that the appeal preferred against the said order has also been dismissed and the same has become final.

16. The court below has gone on to hold that in the complaint u/s 145 Cr.P.C. filed before Revenue Divisional Officer, a finding has been recorded that the subject property was under the enjoyment of the 2<sup>nd</sup> respondent



CRL.A. No.637/2022

WEB COPY

herein and in the deposition of the appellant, the same has been admitted by the appellant. On the basis of the aforesaid materials, the court below has recorded a finding that the subject property was under the enjoyment of the 2<sup>nd</sup> respondent and the complaint that respondents 1, 3 and 4 trespassed into the property, as claimed by the appellant, is wholly unacceptable.

17. When it is the categorical deposition of the appellant that the suit filed by him had ended in dismissal and the appeal against the said order has also been dismissed and the complaint u/s 145 Cr.P.C. has also been held against the appellant, which facts have been tacitly accepted by the appellant in his deposition, the court below has recorded a finding that the lease agreement has been entered into between the appellant and the respondent upon the appellant receiving a sum of Rs.5 Lakhs for the 2<sup>nd</sup> respondent and the Revenue Divisional Officer has recorded a finding that the subject property is in enjoyment of the respondents under the lease deed and had dismissed the complaint preferred by the appellant.



CRL.A. No.637/2022

WEB COPY

18. Upon appreciating all the aforesaid materials, the court below has come to a definitive conclusion that the allegations leveled against the respondents by the appellant have not been proved and there are no materials to infer that the allegations are true and that the documents submitted are fabricated and false documents have not been established in the manner known to law and on the basis of the materials placed before it, the court below has recorded that the allegations have not been proved and, accordingly, acquitted the respondents, which finding is just and reasonable and is borne out by materials on record.

19. A careful perusal of the order passed by the court below coupled with the documents available on record, this Court is of the considered view that the order passed by the court below does not suffer any perversity or illegality and the judgment of acquittal recorded by the trial court does not suffer any infirmity and the present appeal is liable to be dismissed.



CRL.A. No.637/2022

WEB COPY

20. For the reasons aforesaid, no case is made out for interference with the judgment of acquittal and, accordingly, this criminal appeal is dismissed confirming the judgment impugned herein.

**13.06.2024**

Indexx : Yes/ No

GLN

To

The Judicial Magistrate No.III  
Coimbatore.

**M.DHANDAPANI, J.**

**GLN**



WEB COPY



CRL.A. No.637/2022

**CRL. A. NO.637 OF 2022**

**13.06.2024**