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Crl.A.No.28 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.28 of 2021

Mr.S.Ashok Kumar
S/o.Santhilal Jain

... Appellant

Vs.

Mahaboob Basha

... Respondent

PRAYER : Criminal Appeal filed under Section 378 of the code of Criminal Procedure, praying to call for records in C.C.No.220 of 2017 on the file of Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur and to set aside the order dated 21.01.2020 in Crl.A.No.149 of 2018 on the file of III Additional District & Sessions Court, Thiruvallur, Poonamallee.

For Appellant : Mr.A.Laxmi Rajarathinam

For Respondent : Mr.B.Janakiram

J U D G M E N T



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This appeal arises against the judgment of acquittal dated 21.01.2020 passed by the learned III Additional District and Sessions Judge, Thiruvallur, Poonamallee in Crl.A.No.149 of 2018, confirming the order passed in C.C.No.220 of 2017 dated 16.08.2018, by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur.

2. The appellant/complainant moved a prosecution informing that he had paid an advance amount of Rs.10,00,000/- to the respondent/accused to purchase his land. The respondent/accused issued a cheque bearing No.956125 dated 30.05.2017 for a sum of Rs.8,00,000/- drawn on Syndicate Bank, Mogappair West 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.220 of 2017 on the file of Judicial Magistrate, Fast Track Court, (Magisterial Level), Ambattur.

3. Before trial Court, appellant/complainant examined himself and



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marked eight exhibits. Two witnesses were examined on the side of defence and four exhibits were marked. On appreciation of materials before it, trial Court, under judgment dated 16.08.2018, acquitted the respondent. There against, the appellant filed Crl.A.No.149 of 2018 on the file of III Additional District and Sessions Court, Tiruvallur, Poonamallee, which was dismissed by judgment dated 21.01.2020. Challenging the concurrent judgments, the present appeal has been filed.

4. Heard the learned counsel for the appellant and learned counsel for the 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 :-



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*"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



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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 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 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



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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 both the Courts below is based on the materials available on record or whether there are materials, which warrant grant of leave by this Court.

8. In acquitting the respondent, the trial Court has reasoned that
(i) it was the case of the respondent that he borrowed money from the complainant's brother for his son's education purposes and he had partly repaid the same and Ex.P7 - sale deed and subject cheque were given as security to the loan amount borrowed by him. This defence has been



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taken by the respondent even in Ex.P5 - reply notice. In Ex.P5 - reply notice, the respondent had strongly denied Ex.P8 - agreement of sale deed. To prove his case, the appellant/complainant has not even examined the witnesses to Ex.P8 - agreement of sale deed.

(ii)the cross-examination of PW-1 clearly proved that he was not having direct knowledge of Ex.P8 and he even did not know who were the witnesses to the agreement.

(iii)when it was the case of the respondent that the appellant/complainant was not having sufficient source of income, it was the duty of the appellant/complainant to establish that he is having sufficient source of income and he actually gave Rs.10,00,000/-. In the cross-examination, PW-1 himself had stated that he was working as a labour in an electrical shop and was earning only Rs.12,000/- p.m.

(iv)the respondent, upon having knowledge that the cheque issued by him is being misused, he gave stop payment instruction to the bank and had also filed a complaint against the appellant/complainant. Further, from the evidence of DW-2, Bank Manager, it is clear that after issuance of the



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subject cheque in the year 2015, the respondent had issued several other cheques. More over, when it was admitted by the appellant/complainant that the sale agreement was entered into in the year 2017, it was the duty of the complainant to prove that the respondent gave the cheque only in the year 2017.

(v) the respondent has established that he had issued the cheque only to Rakesh Kumar, brother of the complainant, through Ex.P5 - reply notice and Ex.D1 - CSR No.51/2017.

(vi) Though it was the case of the appellant/complainant that in order to escape from liability, the respondent has preferred the complaint against him, the materials placed on record sufficiently proved that upon having knowledge that the subject cheque was being misused, the respondent preferred the complaint and had also issued stop payment instructions.

9. On the above reasoning, the trial Court found that non-examination of witnesses and non-production of documents by the appellant/complainant led to failure on the part of the appellant/complainant



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to establish his case. Ex.P1 - cheque was not supported by consideration and there was no enforceable debt existed between the complainant and the accused and the respondent had sufficiently rebutted the statutory presumption. In the aforestated circumstances, the trial Court found that the appellant/complainant had failed to prove his case beyond reasonable doubt and acquitted the respondent.

10. The first appellate Court, on appreciation of materials before it, found that the trial Court had rightly accepted the rebuttal given by respondent and held that the appellant/complainant had failed to establish his case beyond reasonable doubt. Accordingly, the first appellant Court concurred with the finding of the trial Court and confirmed the judgment of acquittal. This Court also finds no error in the reasoning given by both the Courts below in acquitting the respondent.



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11. Accordingly, this Criminal Appeal is dismissed.

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NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

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To

1. The learned Judicial Magistrate
Fast Track Court,(Magisterial Level),
Ambattur.
2. The learned III Additional District & Sessions Judge,
Thiruvallur,
Poonamallee.



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