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Crl.A.No.336 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.336 of 2021

P.Palaniyappan

... Appellant

Vs.

J.Baskar

... Respondent

Prayer:

Appeal filed under Section 378 of Criminal Procedure Code seeking to set aside the order of acquittal dated 14.08.2020 made in S.T.C.No.456 of 2016 on the file of the Fast Track Judicial Magistrate Court – II, Erode by allowing this criminal appeal.

For Appellant : Mr.R.Prabakar
For Respondent : NRN

J U D G M E N T

The criminal appeal has been filed seeking to set aside the order dated 14.08.2020 passed in S.T.C.No.456 of 2016 by the learned Fast Track Judicial Magistrate Court – II, Erode.

2.The case of the appellant is that the appellant is the complainant in S.T.C.No.456 of 2016 on the file of the learned Fast



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Track Judicial Magistrate Court – II, Erode and he filed the complaint under Section 138 of the Negotiable Instruments Act as against the respondent and after adjudication, the trial Court acquitted the accused/ respondent. Aggrieved by the same, the appellant has filed this appeal.

3.The learned counsel appearing for the appellant submitted that the respondent borrowed a sum of Rs.9,23,000/- from the appellant on 10.03.2016, for which, the respondent issued cheque bearing no.040456 dated 20.04.2016 drawn on HDFC Bank, Rasipuram Branch. The said cheque when presented for collection on 13.05.2016 was returned for the reason 'dormant ISF' on 16.05.2016. Thereafter, the petitioner issued legal notice dated 23.05.2016 to the respondent and the same was received by the respondent on 24.05.2016, however, the respondent did not repay the amount. Hence, the appellant filed the complaint under Section 138 of the Negotiable Instruments Act before the trial Court and the trial Court acquitted the respondent.

4.The learned counsel appearing for the appellant further submitted that the appellant, in order to prove the case, examined



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himself as P.W.1 and marked exhibits Ex.P1 to Ex.P13. The respondent examined two witness and marked exhibits Ex.D1 to Ex.D3. The learned counsel further submitted that the respondent did not deny the signature in the instrument and the other columns and he denied only the date written in the instrument. Once the respondent admits the signature, presumption always lie in favour of the appellant. It is for the respondent to rebut the presumption and without any rebuttal by the respondent, the trial Court acquitted the respondent on the ground that the appellant have no sufficient means to lend money to the respondent, which is perverse and is liable to be interfered with.

5.Heard the learned counsel appearing for the appellant. Till date, the appellant has not effected service on the respondent. Considering the pendancy of the case, this Court is inclined to dispose of the case based on the materials available on record.

6.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 Rudragoudqr & Ors. – Vs – State of Karnataka**



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(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 :-

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



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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 reappraise the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappraising 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)



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7.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 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.

8.In the present case, the appellant claim that the respondent borrowed a sum of Rs.9,23,000/- from the appellant on 10.03.2016, for which, the respondent issued cheque bearing no.040456 dated 20.04.2016 drawn on HDFC Bank, Rasipuram Branch. The said cheque when presented for collection on 13.05.2016 was returned for the reason 'dormant ISF' on 16.05.2016. Thereafter, the appellant issued legal notice dated 23.05.2016 to the respondent and the same was received by the respondent on 24.05.2016, however, the



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respondent did not repay the amount.

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9.Perusal of records reveal that there was transaction between the appellant and the respondent with regard to lending out centring materials. Nowhere in the cross examination, the appellant has stated that the respondent borrowed the disputed amount from him. Further, D.W.1 in his cross examination has stated that the appellant had account in Indian Overseas Bank and as on 28.12.2015, he had balance of Rs.3,93,689/- and on 09.04.2016, he had balance of Rs.1,34,935/- in his account, which shows that there was no transaction for the amount of Rs.9,23,000/-. Hence, the trial Court rightly arrived at the conclusion that the appellant had no sufficient means to lend the disputed amount to the respondent and acquitted the respondent, which warrants no interference.

10.The criminal appeal is dismissed. The order dated 14.08.2020 made in S.T.C.No.456 of 2016 by the Fast Track Judicial Magistrate Court – II, Erode is confirmed.

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Index: Yes/ No

Speaking Order: Yes/ No NCC: Yes/ No

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M.DHANDAPANI,J.
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