



Crl.A.No.674 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.674 of 2021

TN.Buvaneswaran

... Appellant

Vs.

K.Rajendran

... Respondent

Prayer:

Appeal filed under Section 378 of Criminal Procedure Code seeking to set aside the order of acquittal dated 23.07.2021 made in C.C.No.5972 of 2016 passed by the learned Metropolitan Magistrate, FTC-I and convict the accused for the offence committed under Section 138 of Negotiable Instruments Act, direct the accused to pay compensation as prayed for in the complaint.

For Appellant : Mr.K.Mahalingam

For Respondent : Mr.M.L.Joseph

for M/s.Chennai Law Associates

J U D G M E N T

The criminal appeal has been filed seeking to set aside the order dated 23.07.2021 passed in C.C.No.5972 of 2016 by the learned Metropolitan Magistrate, FTC-I, Egmore @ Allikulam, Chennai.



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2.The case of the appellant is that the appellant is the complainant in C.C.No.5972 of 2016 on the file of the learned Metropolitan Magistrate, FTC-I, Egmore @ Allikulam, Chennai 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 appellant used to lend money to the poor and needy people and the appellant and the respondent are known to each other and the respondent borrowed a sum of Rs.5 Lakhs on 18.02.2010, Rs.1 Lakh on 20.02.2010, Rs.1,50,000/- on 29.03.2010, Rs.1 Lakh on 12.04.2010, Rs.1 Lakh on 02.05.2010, Rs.50,000/- on 19.06.2010, Rs.50,000/- on 22.06.2010, Rs.50,000/- on 02.08.2010, Rs.50,000/- on 11.08.2010, Rs.50,000/- on 24.12.2010 and Rs.20,000/- on 14.01.2011 totalling to a sum of Rs.12,20,000/- and agreed to repay the same with 18% interest. Thereafter he repaid a sum of Rs.10,02,500/- [Rs.2,14,687 towards principal amount and Rs.7,87,813 towards interest] and for the balance amount of



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R.13,41,097/- the respondent executed promissory note and issued two post dated cheques, viz., cheque bearing no.518209 dated 01.06.2016 drawn on Indian Bank, Washermanpet Branch for a sum of Rs.10 Lakhs and cheque bearing no.518208 dated 01.07.2016 drawn on Indian Bank, Washermanpet Branch for a sum of Rs.3,41,097/-.

4.The learned counsel appearing for the appellant further submitted that cheque no.518209 when presented for collection was returned for the reason 'funds insufficient' on 02.06.2016 and cheque no.518208 when presented for collection was returned for the reason 'funds insufficient' on 11.07.2016. Thereafter, the appellant issued legal notices dated 18.06.2016 and 14.07.2016 to the respondent and the same were received by the respondent on 20.06.2016 and 15.07.2016, and the respondent sent reply notice dated 15.07.2016 with vague information, for which the appellant sent rejoinder notice dated 30.07.2016 and since the respondent did not repay the amount, the appellant filed the complaint under Section 138 of the Negotiable Instruments Act before the trial Court, however, the trial Court acquitted the respondent.



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5.The learned counsel appearing for the appellant further submitted that the appellant, in order to prove the case, examined himself as P.W.1 and also examined another witness P.W.2 and marked exhibits Ex.P1 to Ex.P27. The respondent neither examined any witness nor marked any exhibits. The learned counsel further submitted that the appellant lent the amount to the respondent between 18.02.2010 to 14.01.2011 and the same was revalidated during the year 2014 within a period of three years and further submitted that there are lot of transactions inbetween the appellant and the respondent and this itself shows that the appellant's case is not time barred. The learned counsel further submitted that the respondent did not deny the signature in the instruments. 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 which is not sustainable and is liable to be interfered with.

6.The learned counsel appearing for the respondent submitted that even a bare perusal of the complaint reveals that the appellant has not approached the Court with clean hands. In the complaint,





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 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



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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)

9. 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



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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.

10. In the present case, the appellant claims that the respondent borrowed a sum of Rs.12,20,000/- and agreed to repay the same with 18% interest. Thereafter he repaid a sum of Rs.10,02,500/- [Rs.2,14,687 towards principal amount and Rs.7,87,813 towards interest] and for the balance amount of Rs.13,41,097/- the respondent executed promissory note and issued two post dated cheques, viz., cheque bearing no.518209 dated 01.06.2016 drawn on Indian Bank, Washermanpet Branch for a sum of Rs.10 Lakhs and cheque bearing no.518208 dated 01.07.2016 drawn on Indian Bank, Washermanpet Branch for a sum of Rs.3,41,097/- and cheque no.518209 when presented for collection was returned for the reason 'funds insufficient' on 02.06.2016 and cheque no.518208 when presented for



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collection was returned for the reason 'funds insufficient' on 11.07.2016.

11.Perusal of records reveal that P.W.2 in his evidence has admitted that when the appellant lent a sum of Rs.5 Lakhs to the respondent and the respondent gave blank cheque. Further, the trial Court has made calculation based on the averments made in the complaint and observed that as on 30.05.2016 the balance amount to be paid by the respondent is Rs.10,15,372/-, however, the appellant has stated that the balance amount to be paid by the respondent is Rs.13,41,097/- for which he issued the disputed cheques, which creates doubt and arrived at a conclusion that the cheques given by the respondent for security purpose were misused by the appellant by filling different amounts and different dates, which warrants no interference.

10.The criminal appeal is dismissed. The order dated 23.07.2021 passed in C.C.No.5972 of 2016 by the learned Metropolitan Magistrate, FTC-I, Egmore @ Allikulam, Chennai, Erode is confirmed.

04.07.2024



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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The Metropolitan Magistrate, FTC-I, Egmore @ Allikulam,
Chennai, Erode.

M.DHANDAPANI,J.

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