



Crl.A.No.659 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.659 of 2021

N.Balaganapathi

... Appellant

Vs.

Govindasamy

... Respondent

Prayer:

Appeal filed under Section 378 of Criminal Procedure Code seeking to set aside the judgment of acquittal of the accused made in C.A.No.8 of 2020 on the file of III Additional Sessions Court, Kallakurichi dated 06.03.2021 reversing the conviction and sentence passed in C.C.No.31 of 2019 on the file of Judicial Magistrate (Fast Court Level), Kallakurichi dated 28.01.2020 by allowing the above appeal.

For Appellant : Mr.S.Kaithamalai Kumaran
For Respondent : Mr.Avinas Wadhvani

J U D G M E N T

The criminal appeal has been filed seeking to set aside the



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judgment dated 06.03.2021 made in C.A.No.8 of 2020 by the III Additional Sessions Court, Kallakurichi, reversing the conviction and sentence passed in C.C.No.31 of 2019 by the learned Judicial Magistrate (Fast Court Level), Kallakurichi dated 28.01.2020.

2.The case of the appellant is that the appellant is the complainant in C.C.No.31 of 2019 on the file of the learned Judicial Magistrate (Fast Court Level), Kallakurichi and he filed the complaint under Section 138 of the Negotiable Instruments Act as against the respondent and after adjudication, the trial Court vide judgment dated 28.01.2020 convicted the respondent for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo one year simple imprisonment and to pay the cheque amount of Rs.6,00,000/- within a period of two months as compensation to the complainant in default to undergo three months simple imprisonment. Aggrieved by the same, the respondent preferred appeal in C.A.No.8 of 2020 before the III Additional Sessions Court, Kallakurichi and the lower Appellate Court vide judgment dated 06.03.2021 allowed the said appeal and acquitted the accused/ respondent. Aggrieved by the same, the appellant has filed this appeal.



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3.The learned counsel appearing for the appellant submitted that the appellant and the respondent are friends and the respondent borrowed a sum of Rs.6 Lakhs as hand loan from the appellant on 07.08.2018 and in order to repay the same issued post dated cheque, viz., cheque bearing no.001488 dated 03.10.2018 drawn on ICICI Bank, Kallakurichi Branch and the said cheque when presented for collection on 03.10.2018 was returned for the reason 'funds insufficient' on 11.10.2018. Thereafter, the appellant issued legal notice dated 01.11.2018 to the respondent and the same was received by the respondent on 06.12.2018, however, the respondent neither sent any reply nor repaid the amount. Hence, the appellant filed the complaint under Section 138 of the Negotiable Instruments Act before the trial Court and the trial Court convicted the respondent, however, the lower Appellate Court acquitted the respondent.

4.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 marked exhibits Ex.P1 to Ex.P5. The respondent examined one witness D.W.1 however did not mark any exhibit. The witness marked exhibits Ex.C1 and Ex.C2. The learned counsel further



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submitted that the lower Appellate Court acquitted the respondent on the ground that the appellant did not file the complaint within the period of limitation.

5.The learned counsel appearing for the appellant further submitted that the signature in the instrument or the other columns in the instrument are not disputed. All those points are held against the accused. However, the lower Appellate Court held that the legal notice issued by the appellant was delivered to the respondent on 02.11.2018 and hence, the complaint is barred by the Law of Limitation and no cause of action arose as per 06.12.2018 to file the complaint and that the complainant has not sought any permission to condone the delay in filing the complaint. The learned counsel further submitted that Ex.P.5 filed by the appellant clearly state that the item was delivered to the respondent on 06.12.2018 and it is the conclusive proof to prove that the cause of action arose on 06.12.2018 for which the complaint was filed on 10.01.2019, which is well within the period of limitation.

6.Per contra, the learned counsel appearing for the respondent



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submitted that the appellant claim that he took the consignment through registered post. If the consignment was sent by registered post, the appellant should possess acknowledgement card. However, in the present case, except Ex.P5, no acknowledgement card was marked. The learned counsel further submitted that before the trial Court, the respondent examined Deputy Superintendent, Postal Department, Kallakurichi as D.W.1 and D.W.1 marked Ex.C1 and Ex.C2 and he categorically deposed that the consignment was delivered on 02.11.2018. If it is so, the cause of action arose from 02.11.2018 and 45 days expired prior to 10.01.2019 and the complaint filed by the appellant was barred by limitation in terms of Sections 138 and 142 of the Negotiable Instruments Act.

7.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent.

8.Time and time again, the scope and power of the High Court to interfere with an order of acquittal recorded by the Court below has been highlighted by the Supreme Court and recently in **Babu Sahebagouda 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,



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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



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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



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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 record to render a finding. However, in reappreciating the evidence, this Court has to see whether the view taken by the Court below could not be taken by any prudent man on appreciating the materials available before it. If the view taken by the Court below, considered overall on the materials placed, is just and reasonable that the view taken by the Court below is on proper appreciation of the materials, the High Court cannot interfere with the acquittal on the ground that another view is possible.

10.The point that arise for consideration in this appeal is whether the appellant has filed the complaint within a period of 45 days from the date of issuance of notice or not. Admittedly, the consignment was booked on 01.11.2018 by registered post with acknowledgement due. It is equally admitted fact that the acknowledgement card was not marked before the trial Court. If it had been marked, it would be



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conclusive proof for the trial Court to count the days. The respondent had examined Deputy Superintendent, Postal Department, Kallakurichi as D.W.1 and the evidence let in by D.W.1 makes it clear that the consignment was booked at Nallathur Branch of Kallakurichi Post Office and the daily account marked as Ex.C2 by D.W.1 would reveal that the consignment was served on the respondent on 02.11.2018. When the primary evidence shows that the consignment was served on 02.11.2018, no other evidence can merge over the primary evidence. There is no proof available to prove that the consignment was delivered to the respondent on 06.12.2018. This clearly shows that the notice issued by the appellant was delivered to the respondent on 02.11.2018 and the appellant filed the complaint after expiry of 45 days on 10.01.2019. Hence, the lower Appellate Court arrived at the conclusion that the complaint filed by the appellant was barred by limitation and the appellant has also not filed any application seeking to condone the delay. Hence, the impugned judgment warrants no interference.

11.The criminal appeal is dismissed. The judgment made in C.A.No.8 of 2020 by the learned III Additional Sessions Judge,



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Kallakurichi, dated 06.03.2021, reversing the conviction and sentence passed in C.C.No.31 of 2019 by the learned Judicial Magistrate (Fast Court Level), Kallakurichi, dated 28.01.2020, is confirmed.

19.07.2024

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The III Additional Sessions Court,
Kallakurichi.

2.The Judicial Magistrate (Fast Court Level),
Kallakurichi



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M.DHANDAPANI,J.
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