



Crl.A.No.526 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.526 of 2024

Manickam
S/o.Vadamalai Pillai

... Appellant

Vs.

Murugavel
S/o.Panneer

... Respondent

PRAYER : Criminal Appeal filed under Section 378(4) of the code of Criminal Procedure, against the acquittal of the respondent in Crl.A.No.59 of 2018 by judgment dated 12.09.2022 on the file of the Additional District Judge, Mayiladuthurai, reversing the judgment of conviction dated 20.09.2018 in C.C.No.19 of 2016 on the file of Judicial Magistrate, (Fast Track Court), Mayiladuthurai.

For Appellant : Mr.B.Harish
for M/s.K.M.Vijayan Associates

For Respondent : Not ready notice



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J U D G M E N T

This appeal arises against the judgment dated 12.09.2022 passed by learned Additional District Judge, Mayiladuthurai, in Crl.A.No.59 of 2018 reversing the judgment dated 20.09.2018 passed by the learned Judicial Magistrate, (Fast Track Court), Mayiladuthurai, in C.C.No.19 of 2016.

2. The appellant/complainant moved a prosecution informing that respondent/accused and his mother borrowed a hand loan of Rs.1,00,000/- from him on 02.05.2013 for his family expenses and agreed to repay the same with 12% interest by executing a promissory note. The respondent issued a cheque bearing No.849282 dated 27.10.2015 for a sum of Rs.1,30,000/- drawn on Indian Bank, Sirkazhi 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



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complaint and the same was taken on file in C.C.No.19 of 2016 on the file of learned Judicial Magistrate (Fast Track Court), Mayiladuthurai.

3. Before trial Court, appellant/complainant examined himself and marked 5 exhibits. Two witnesses were examined on the side of defence and two exhibits were marked. On appreciation of materials before it, trial Court, under judgment dated 20.09.2018, convicted the respondent and sentenced him to undergo one year simple imprisonment and to pay compensation of Rs.1,30,000/- in default, one month simple imprisonment. There against, the respondent preferred an appeal in Crl.A.No.59 of 2018 on the file of Additional District Judge, Mayiladuthurai, which was allowed by judgment dated 12.09.2022 and the respondent was acquitted from all charges. Challenging the same, the present appeal has been filed.

4. Heard the learned counsel for the appellant.



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5. 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 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 :-

*"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 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;



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(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 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.



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

8. In acquitting the respondent, the Court below has reasoned that it was the case of the respondent that the subject cheque was given only as a security for the loan of Rs.55,000/- obtained by him and his mother and the said cheque was misused by the appellant. Though it was the case of the appellant that there was no other loan transaction between him and the accused, he himself admitted that he filed a suit in O.S.No.92 of 2016 on the file of Sub Court, Mayiladuthurai, based on the promissory note against the accused and his mother. The above clearly revealed that the appellant had used both the cheque and the promissory note against the accused and his mother. Further, Ex.D1 and Ex.D2, letters written by complainant to the



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accused and his mother respectively, disclosed that he asked them to settle the loan of Rs.55,000/- obtained by them and the said loan was obtained by executing the aforesaid promissory note and Ex.P1-cheque was given only as a security. The appellant had purposely suppressed filing of suit in the present complaint and filing of complaint in the aforesaid suit, which clearly showed that he initiated two separate legal proceedings against the accused and his mother for one and the same transaction. Though the evidence of DW-1 and DW-2 was to the effect that there was no female issue for the respondent's mother, the same was not supported by documentary evidence. However, at the same time, Exs.D1 and D2 clearly established that the subject cheque was given only as a security. Though the respondent had failed to enter the witness box to establish his defence and he has not chosen to give reply to the notice [Ex.P4] issued by the complainant, the aforesaid circumstances and documents clearly established that the respondent had rebutted the presumption. Considering the overall circumstances of the case and the oral and documentary evidence, the appellate Court found that the trial Court had failed to consider the oral and documentary evidence in



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proper perspective and wrongly convicted the respondent.

9. On the above reasoning and for some other reasons, the Court below has held that the respondent has proved his defence through evidence. Hence, the finding of the trial Court holding the respondent guilty of offence u/s.138 of the Negotiable Instruments Act cannot be accepted and accordingly, acquitted the respondent from all charges. This Court does not find any reason to interfere with the judgment of the Court below acquitting the accused.

10. 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

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- 1.The Additional District Judge,
Mayiladuthurai.
- 2.The Judicial Magistrate,
Fast Track Court, Mayiladuthurai.



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M.DHANDAPANI, J.

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