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Crl.A.No.4 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.4 of 2024

Sheik Ansur (Died)

1.Gulzar bee

2.J.Dilnawaz

3.A.Nowshath

4.N.Suriya

... Appellants

Vs.

G.Sankar

... Respondent

PRAYER : Criminal Appeal filed under Section 378 of the code of Criminal Procedure, praying to call for records relating to the order dated 26.10.2023 made in C.C.No.132 of 2019 on the file of the learned Judicial Magistrate, Fast Track Court, Kallakurichi and set aside the same by allowing the criminal appeal.



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For Appellants : Mr.N.Manoharan

J U D G M E N T

This appeal arises against the judgment of acquittal dated 26.10.2023 passed by the learned Judicial Magistrate, Fast Track Court, Kallakurichi, in C.C.No.132 of 2019.

2. The complainants are the appellants herein and moved a prosecution informing that the accused has obtained a sum of Rs.7,00,000/- from the father of the complainants promising to secure a job for the third appellant in TNEB, however, he has failed to secure the job and on demand, the respondent/accused had issued three cheques viz., bearing No.679617 dated 31.12.2018 for a sum of Rs.50,000/-, bearing No.286802 dated 14.06.2019 for a sum of Rs.3,00,000/- and bearing No.286803 dated 26.06.2019 for a sum of Rs.3,00,000/- and when the cheques were presented for collection, the same were returned as insufficient funds and the



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complainants had issued a legal notice dated 30.08.2012 to the accused and it was received by the accused on 11.07.2019, however, he had not replied to the same, which triggered the complainants to file a complaint and the complaint was taken on file in C.C.No.132 of 2019 by the learned Judicial Magistrate, Fast Track Court, Kallakurichi.

3. Before trial Court, on the side of the complainants, the father of the complainants examined himself and two other witnesses were examined and ten exhibits were marked. No witnesses were examined on the side of defence and five exhibits were marked. On appreciation of materials before it, the trial Court, under judgment dated 26.10.2023 in C.C.No.132 of 2019, acquitted the respondent. Challenging the same, the present appeal has been filed.

4. The learned counsel appearing for the appellant submits that the execution of the cheques has not been denied and the signature found in the cheques was also admitted, therefore, it is for the accused to rebut the



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legal presumption beyond all reasonable doubts. However, no evidence has been let in to rebut the presumption under Section 139 of Negotiable Instruments Act. The appellants have proved the transaction between them by examining P.W.1 to P.W.3 to corroborate their version. The trial Court has erred in disbelieving the evidence of P.W.1 merely based on suggestion put in the cross-examination.

5. Heard the learned counsel appearing for the appellants.

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 Sahebagouda Rudragoudar & Ors. – Vs – State of Karnataka (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 :-



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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.



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(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.



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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;



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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*



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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 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 trial court is based on the materials available on record.

9. While the cheques are alleged to have been issued by the



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respondent towards the discharge of the liability to the appellants, it is the case of the respondent that the cheques were misused and they were not given for discharging a legally enforceable debt.

10. In the aforesaid factual scenario, Sections 138 and 139 of the Act, which are material to find out the legal presumption, which is casted on the accused/respondents with regard to the cheque being issued for discharging a legally enforceable debt, which ought to be rebutted through materials to absolve the respondents, the said provisions are quoted hereunder for better appreciation:-

“138. Dishonour of cheque for insufficiency, etc., of funds in the account.

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank



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unpaid either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been, presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen days of the receipt of information by



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him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.-For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

139. Presumption in favour of holder.

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

11. The appellants are drawing inspiration from the presumption provided for u/s 139 of the Act to impress upon this Court that it is for the respondents to prove that the cheques, which are the subject matter of the



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present appeal were not issued towards the discharge of any debt or liability and in the absence of such proof, necessarily, the rigours of Section 138 of the Act would stand attracted.

12. In this regard, a careful perusal of the order passed by the court below reveals that the court below had embarked upon a careful analysis of the materials placed before it and had come to the conclusion that though the cheques were dishonoured, however, the same was not given towards a legally debt; rather, it was given for some illegal or immoral purpose which is against public policy and, therefore, the provisions of Section 138 and 139 of the NI Act would not stand attracted.

13. Even a bare perusal of the facts would reveal that the amounts which were paid by means of cheques, were for the purpose of procuring employment for the third appellant. There has been no monetary transaction between the appellant and the respondent and the cheques were given for the purpose of getting employment. Therefore, the issue of a debt does not at



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all arise in this case and once there is no debt, legal enforceability would not arise, more so, the purpose for which the amounts are alleged to have been given against public policy and such being the case, in the absence of legally enforceable debt, inspite of the dishonour of the cheques, the court below has held that the case would not fall within the contours of Section 138 of the NI Act, which reasoning is just, reasonable and proper and does not require any interference at the hands of this Court.

14. For the reasons aforesaid, this appeal fails and the same is dismissed confirming the judgment of acquittal recorded by the learned Judicial Magistrate, Fast Track Court, Kallakurichi, in C.C.No.132 of 2019 dated 26.10.2023.

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NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No



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To

The learned Judicial Magistrate, Fast Track Court, Kallakurichi.



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M.DHANDAPANI, J.

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