2025:DHC:6277

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 22.07.2025

\+ **CRL.A. 530/2017**

STATE OF NCT OF DELHI .....Appellant
Through: Mr. Pradeep Gahalot, APP for State with SI Himanshu

versus

MAHENDER SINGH .....Respondent
Through: Mr.K.L.Mishra, Advocate

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of the present appeal, the appellant/State has assailed the impugned judgment dated 16.04.2015 passed by learned ASJ in CA No.37/2014 whereby the appellant's conviction passed by the learned Magistrate was set aside and the respondent was acquitted in context of FIR No. 265/94 u/s 420/467/468/471 IPC at PS Najafgarh.

Pertinently, the respondent was initially convicted by the learned Magistrate vide judgement dated 07.06.2012 for the offence punishable under Sections 419/420/467/468/471 IPC and vide order on sentence dated 29.06.2012, he was sentenced to undergo R.I. for a period of six months with fine of Rs.500/- for the offence under Section 419 IPC, one year R.I. alongwith fine of Rs.1,000/- for the offence under Section 420 IPC, one year R.I. with fine of Rs.1,000/- under Section 467 IPC, one year R.I. with fine of Rs.1,000/- under Section 468 IPC and lastly to further undergo R.I. for six months with fine of Rs.500/- under Section 471 IPC. In default of payment of fine, the appellant/convict was directed to further undergo R.I. for six months. All the sentences were to run concurrently and benefit of Section 428 CrPC was also given to the respondent.

2. Notably, the facts as noted in the impugned judgment are as under: -

> *"Brief facts necessary for disposal of the present appeal, as per the complaint of the respondent before the Ld. Trial Court, are that on 25.11.1993, Sh. V.K.Khandelwal, Partner M/s Bajrang Trading Company, Gangapur City, Rajasthan informed the complainant that four drafts belonging to his firm were sent through registered post, but were stolen in between and on inquiry it was found that money against these drafts had been withdrawn from complainant's bank by account holder Ashwani Kumar. On the basis of complaint of Sh. S.P.Sharma, Bank Manager, SBI, Najafgarh, Delhi, FIR No.265/94 under Section 420 IPC was registered at PS Najafgarh against the appellant/convict. Vide his complaint, the complainant had mentioned that one Ashwani Kumar opened a savings account in their branch on 08.11.1993 and on 09.11.1993 he deposited four bank drafts amounting to Rs.93,000/- for clearance and on 12.11.1993, Ashwani Kumar withdrew Rs. 90,000/- from his account. Thereafter, the introducer of Ashwani Kumar namely Mahender Singh was contacted. It is further stated that during inquiry, the real name of Ashwani Kumar was found to be Mahender Singh and he had withdrawn the money by opening the account in the name of false person and thereafter the appellant/convict was apprehended at the instance of Mahender Kumar."*

3. On a perusal of the records, it is noticed that in the appeal preferred by the respondent, one of the grounds taken by the respondent was that though the prosecution alleged that four bank drafts belonging to one *V.K. Khandelwal* were deposited by the respondent in the bank account forged by him, however, *V.K. Khandelwal* was not even examined.

4. Learned APP for the State submits that the Sessions Court failed to

appreciate that the complaint was lodged by *Shri S.P. Sharma*, Regional Manager (PW-7) stating that he was posted as Branch Manager at ADB Najafgarh Village and an account bearing No.21750A was opened in the name of one *Ashwani Kumar*, and it was later revealed that the person who opened the account was actually the respondent. The respondent was introduced by one *Mahinder Kumar*, an existing account holder and sum deposited under four bank drafts in the said account was later withdrawn. The judgment of acquittal passed by the Sessions Court is also assailed by contending that said *Mahinder Kumar* had correctly identified the respondent. He stated that his tenant, namely one *Vinod Kumar*, introduced the respondent to him.

5. The controversy in the present case revolves around the respondent opening an account for the purpose of depositing four stolen bank drafts and later withdrawing the said sum. Pertinently, the prosecution alleged that four demand drafts deposited by the respondent, belonged to one *V.K. Khandelwal* partner of M/s Bajrang Trading Co. The said drafts were alleged to be stolen. In this regard, though the prosecution cited *V.K. Khandelwal* as a prosecution witness, but never offered him for examination. In absence of the examination of *V.K. Khandelwal*, the said fact remained unproved. In fact, the I.O. did not even record the statement of *V.K. Khandelwal* during the investigation. Further, insofar as the allegation of opening of a bank account by the respondent in the name of *Ashwani Kumar* is concerned, the prosecution had sought to establish the same by taking sample signatures and handwriting of the accused. The Sessions Court noted that the same was done without any permission from the learned Magistrate. It is also worthwhile to note that the account opening form was

not even put to *Mr. Mahinder Kumar,* the alleged introducer.

6. The law pertaining to double presumption of innocence operating in favour of an accused at the appellate stage after his acquittal by the Trial Court is fortunately a settled position, no longer *res integra*. A gainful reference may be made to the Supreme Court's decision in Ravi Sharma v. State (NCT of Delhi), reported as **(2022) 8 SCC 536**, wherein it was observed, as hereunder:

> *"**8.** Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Criminal Procedure Code (for short "CrPC") while deciding an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant portion of a recent judgment of this Court in Jafarudheen v. State of Kerala [Jafarudheen v. State of Kerala, (2022) 8 SCC 440] as follows : (SCC p. 454, para 25)*
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> > *"25. While dealing with an appeal against acquittal by invoking Section 378CrPC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.""*

7. At this juncture, it is also deemed apposite to refer to the decision of the Supreme Court in Anwar Ali v. State of H.P., reported as **(2020) 10 SCC 166**, wherein it has been categorically held that the principles of double presumption of innocence and benefit of doubt should ordinarily operate in favour of the accused in an appeal to an acquittal. The relevant portions are produced hereinunder:

*"**14.1.** In Babu [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] , this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 CrPC. In paras 12 to 19, it is observed and held as under: (SCC pp. 196-99)*

"...

13. In Sheo Swarup v. King Emperor [Sheo Swarup v. King Emperor, 1934 SCC OnLine PC 42 : (1933-34) 61 IA 398 : AIR 1934 PC 227 (2)] , the Privy Council observed as under: (SCC Online PC: IA p. 404)

'… the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.'

...

(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.'

8. In view of the above noted facts, this Court is inclined to concur with the judgment of the acquittal rendered by the Sessions Court. The present appeal is lacking merit and is accordingly dismissed.

MANOJ KUMAR OHRI
(JUDGE)

JULY 22, 2025
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