

Jitendra Chimanlal Parikh Power of Attorney-Holder of Versus Vs Arvind Kantilal Mehta Prop., Shree Corporation & Anr.

Court: Gujarat High Court

Date of Decision: Jan. 9, 2025

Acts Referred: Code of Criminal Procedure, 1973 " Section 313, 378
Negotiable Instruments Act, 1881 " Section 138

Hon'ble Judges: S.V. Pinto, J

Bench: Single Bench

Advocate: Meena Vyas, Iqbal M Malik, Bhargav Pandya

Final Decision: Dismissed

Judgement

Sr.No.,Details,Exh.

1,Power of Attorney,52

2,Cheque No.301223,53

3,Return memo.,54

4,"Forwarding Letter dated 25.07.2000 issued by the Balasinor Nagarik

Sahakari Bank.",55

5,Receipt of R.P.A.D. dated 26.07.2000.,56

6,Envelope with the notice returned unserved,57

7,Office copy of notice,58

Mallappa & Ors. Vs. State of Karnataka passed in Criminal Appeal No.1162 of 2011 on 12.02.2024, wherein, the Apex Court has observed in Para",,

Nos. 24 to 26, as under:",,

“24. We may firstly discuss the position of law regarding the scope of intervention in a criminal appeal. For, that is the foundation of this",,

challenge. It is the cardinal principle of criminal jurisprudence that there is a presumption of innocence in favour of the accused, unless",,

proven guilty. The presumption continues at all stages of the trial and finally culminates into a fact when the case ends in acquittal. The,,

presumption of innocence gets concretized when the case ends in acquittal. It is so because once the Trial Court, on appreciation of the",,

evidence on record, finds that the accused was not guilty, the presumption gets strengthened and a higher threshold is expected to rebut the",,,

same in appeal.,,

25. No doubt, an order of acquittal is open to appeal and there is no quarrel about that. It is also beyond doubt that in the exercise of",,,

appellate powers, there is no inhibition on the High Court to re-appreciate or re-visit the evidence on record. However, the power of the",,,

High Court to re- appreciate the evidence is a qualified power, especially when the order under challenge is of acquittal. The first and",,,

foremost question to be asked is whether the Trial Court thoroughly appreciated the evidence on record and gave due consideration to all,,

material pieces of evidence. The second point for consideration is whether the finding of the Trial Court is illegal or affected by an error of,,

law or fact. If not, the third consideration is whether the view taken by the Trial Court is a fairly possible view. A decision of acquittal is not",,,

meant to be reversed on a mere difference of opinion. What is required is an illegality or perversity.,,

26. It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The "two-views theory" has been judicially recognized by the Courts and it comes into play when the appreciation of evidence results into two equally plausible,,

views. However, the controversy is to be resolved in favour of the accused. For, the very existence of an equally plausible view in favour of",,,

innocence of the accused is in itself a reasonable doubt in the case of the prosecution. Moreover, it reinforces the presumption of",,,

innocence. And therefore, when two views are possible, following the one in favour of innocence of the accused is the safest course of",,,

action. Furthermore, it is also settled that if the view of the Trial Court, in a case of acquittal, is a plausible view, it is not open for the High",,,

Court to convict the accused by reappreciating the evidence. If such a course is permissible, it would make it practically impossible to settle",,,

the rights and liabilities in the eyes of law. In *Selvaraj v. State of Karnataka*,,,

"13. Considering the reasons given by the trial court and on appraisal of the evidence, in our considered view, the view taken by the",,,

trial court was a possible one. Thus, the High Court should not have interfered with the judgment of acquittal. This Court in *Jagan M.*",,,

Seshadri v. State of T.N. [(2002) 9 SCC 639] has laid down that as the appreciation of evidence made by the trial court while recording the,,

acquittal is a reasonable view, it is not permissible to interfere in appeal. The duty of the High Court while reversing the acquittal has been",,,

dealt with by this Court, thus:",,,

9. We are constrained to observe that the High Court was dealing with an appeal against acquittal. It was required to deal with,

various grounds on which acquittal had been based and to dispel those grounds. It has not done so. Salutory principles while dealing with,

appeal against acquittal have been overlooked by the High Court. If the appreciation of evidence by the trial court did not suffer from any,,

flaw, as indeed none has been pointed out in the impugned judgment, the order of acquittal could not have been set aside. The view taken",,,

by the learned trial court was a reasonable view and even if by any stretch of imagination, it could be said that another view was possible",,,

that was not a ground sound enough to set aside an order of acquittal. (emphasis supplied),,

In *Sanjeev v. State of H.P.*, the Hon'ble Supreme Court analyzed the relevant decisions and summarized the approach of the appellate",,,

Court while deciding an appeal from the order of acquittal. It observed thus:,,

7. It is well settled that:,,

7.1. While dealing with an appeal against acquittal, the reasons which had weighed with the trial court in acquitting the accused must be",,,

dealt with, in case the appellate court is of the view that the acquittal rendered by the trial court deserves to be upturned (see *Vijay Mohan*"),,,

*Singh v. State of Karnataka*⁵, *Anwar Ali v. State of H.P.*)",,,

7.2. With an order of acquittal by the trial court, the normal presumption of innocence in a criminal matter gets reinforced (see *Atley v. State*"),,,

of U.P.)",,,

7.3. If two views are possible from the evidence on record, the appellate court must be extremely slow in interfering with the appeal against",,,

acquittal (see *Sambasivan v. State of Kerala*).",,,

9. In Para 36, the Apex Court, in the case of *Mallappa (Supra)*, has observed as under:,,

36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards,,

and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while",,,

deciding an appeal from acquittal could be summarized as:,,

(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive and inclusive of all,,

evidence, oral or documentary",,,

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge:,,

(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be",,,

followed;,,

(iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;,,

(v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the",,,

reasons given by the Trial Court for acquittal and must cover all the facts;,,

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in",,,

the decision of the Trial Court.,,

9. The law with regard to acquittal appeals is well crystallized and in acquittal appeals, there is presumption of innocence in favour of the accused and",,,

it has finally culminated when a case ends in an acquittal. That the learned Trial Court has appreciated all the evidence and when the learned Trial,,

Court has come to a conclusion that the prosecution has not proved the case beyond reasonable doubts, the presumption of innocence in favour of the",,,

accused gets strengthened. That there is no inhibition to re appreciate the evidence by the Appellate Court but if after re appreciation, the view taken",,,

by the learned Trial Court was a possible view, there is no reason for the Appellate Court to interfere in the same.",,,

10. On minute perusal of the evidence produced by the complainant on record, as per the case of the complainant, the endorsement of "funds",,,

expected please present again and the statutory demand notice dated 26.07.2000 was sent to the accused by R.P.A.D. and the accused received,,

the notice on 05.08.2000 but as per the evidence produced on record, the notice has returned unserved and there is no evidence that the statutory",,,

demand notice has been duly served to the accused. In the cross-examination, the complainant has admitted that "Shri Corporation" the firm of",,,

the accused was sent a notice vide receipt No.290 and the notice was returned with endorsement of "re-direct" and no new address was given,,

and the notice was not served. That beside this, the notice was not served by any other method. Moreover, the complainant has also, during the cross-",,,

examination, admitted that he had not given the amount to the accused as stated in the complaint.",,,

10.1. The learned Trial Court has, in the impugned judgment and order of acquittal, discussed all the evidence and has observed that on appreciation of",,,

the evidence produced by the complainant, the complainant has stated that he has given the statutory demand notice on the residential address as well",,,

as business address of the accused but, no evidence to this effect has been produced on record. The document produced at Exh.56, which is Postal",,,

Acknowledgment No.289 and the document produced at Exh,57, which is the notice sent to the residential address of the accused has returned",,,

unserved and the same is admitted by the complainant during the cross-examination at Exh.51. The complainant has not produced any evidence that,,

the notice was served on the business address of the accused and the complainant has not examined any witness from the postal department to show,,

that the statutory demand notice was duly served and as the service of notice was not proved by the complainant, the learned Trial Court has passed",,,

the impugned judgment and order of acquittal.,,

11. On minute re-appreciation of the entire evidence of the prosecution and the impugned judgment and order, it appears that the learned Trial Court",,,

has thoroughly appreciated all the evidence on record and has given due consideration to all the material pieces of evidence. The learned Trial Court,,

has discussed all the oral as well as documentary evidences and if the evidence produced by the prosecution is examined in light of the law laid down,,

by the Constitution Bench in the case of Mallappa (supra), it appears that the learned Trial Court has arrived at findings which are legal and proper",,,

and there are no errors of law or facts. Moreover, the view taken by the learned Trial Court in acquitting the accused is fairly possible and there is no",,,

illegality and perversity in the impugned judgment and order of acquittal.,,

12. In view of the settled position of law in the decisions of Mallappa (Supra), the learned trial Court has appreciated the entire evidence in proper",,,

perspective and there does not appear to be any infirmity and illegality in the impugned judgment and order of acquittal. The learned Trial Court has,,

appreciated all the evidence and this Court is of the considered opinion that the learned Trial Court was completely justified in acquitting the accused,,

of the charges leveled against them. The findings recorded by the learned Trial Court are absolutely just and proper and no illegality or infirmity has,,

been committed by the learned trial Court and this Court is in complete agreement with the findings, ultimate conclusion and the resultant order of",,,

acquittal recorded by the learned Trial Court. This Court finds no reason to interfere with the impugned judgment and order and the present appeal is,,

devoid of merits and resultantly, the same is dismissed.",,,

13. The impugned judgment and order of acquittal dated 18.08.2005 in Criminal Case No.705 of 2000 passed by the learned Judicial Magistrate First,,

Class, Balasinor, is hereby confirmed.",,,

14. Bail bond stands cancelled. Record and proceedings be sent back to the concerned Trial Court forthwith,,