
(2010) 02 GUJ CK 0033
In the Gujarat High Court
Case No : Criminal Appeal No. 688 of 2001

Harshadbhai B. Sanghvi

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 17-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(4)
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2010) 02 GUJ CK 0033

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : Sikandar Saiyed, for A.J. Shastri and Nikhil S. Kariel, for the Appellant; H.L. Jani, Additional Public Prosecutor for Opponent 1 and B.M. Mangukiya, for Opponent 2, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—The present appeal, u/s 378(4) of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 16.9.2000 passed by the learned Metropolitan Magistrate, Court No. 16, Ahmedabad, in Criminal Case No. 361 of 1996, whereby the accused has been acquitted from the charges leveled against him.

2. The brief facts of the prosecution case are as under:

2.1 The accused was engaged in the business of Stock Exchange in the name of Satkar Investment and Arihant Enterprise at Ahmedabad. The complainant used to purchase and sale shares of different companies through the accused. As per the advice of the accused, the complainant made investment in Devika Finance and paid Rs. 4,14,000/- to the accused by cash as well as by cheque. The accused promised the complainant that after 3 months, he would give certificate, receipts and profits to the complainant but the accused had not acted accordingly and therefore, the complainant came to know subsequently that the accused had not invested money in Devika Finance. Therefore, the complainant asked for his

money from the accused. Thereafter, the accused had given a cheque No. 729853 of Madhavpura Mercantile Cooperative Bank Ltd. dated 16.1.1996 of Rs. 4,14,000/-. The complainant had deposited the cheque in Kalupur Commercial Bank Ltd. in his account, but the said cheque was returned unpaid with endorsement "Account Closed". Thereafter, an offence u/s 138 of the Negotiable Instrument Act, 1881 against the accused.

2.2 Therefore, Criminal Case No. 361 of 1996 with respect to the aforesaid offence was filed against the respondent before the learned Metropolitan Magistrate, Ahmedabad. Necessary investigation was carried out and statements of several witnesses were recorded. The trial was initiated against the respondent.

2.3 To prove the case against the present accused, the prosecution has examined, in all 3 witnesses and also produced documentary evidence.

2.4 At the end of trial, hearing arguments on behalf of prosecution and the defence, the learned trial Judge acquitted the respondents of all the charges leveled against them by judgment and order dated 16.9.2009.

2.5 Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the learned trial Court the appellant has preferred the present appeal.

3. It was contended by learned Counsel Mr. Sikandar Saiyed on behalf of learned Counsel Mr. A. J. Shastri for the appellant that the judgment and order of the trial Court is against the provisions of law; the trial Court has not properly considered the evidence led by the prosecution and looking to the provisions of law itself it is established that the prosecution has proved the whole ingredients of the evidence against the present respondent. Learned Counsel has also taken this Court through the oral as well as the entire documentary evidence. He has contended that learned trial Judge has come to a wrong conclusion and contrary to the well settled principle of law laid down by the Hon"ble Supreme Court. He also contended that when cheque No. 729852 has been cleared by the Bank of the accused on 6.10.1995, then it could have also been presumed that the cheque book of the same could have been issued at he most in the month of August or July, 1995. Therefore, strong presumption could have been drawn in favour of the complainant that the cheque had been intact dated 16.1.1996 and therefore, the accused had been committed offence u/s 138 of the Negotiable Instrument Act. The learned Judge has wrongly acquitted the accused and therefore, the order requires to be quashed and set aside in the interest of justice.

4. It is a settled principle that while exercising appellate power, even 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.

4.1 Even in a recent decision of the Apex Court in the case of State of Goa v.

Sanjay Thakran and Anr. Reported in (2007) 3 SCC 75, the Court has reiterated the powers of the High Court in such cases. In para 16 of the said decision the Court has observed as under:

16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the Judgment delivered by the Court below. However, the appellate court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with.

4.2 Similar principle has been laid down by the Apex Court in the cases of State of Uttar Pradesh v. Ram Veer Singh and Ors. reported in AIR 2007 SCW 5553 and in Girja Prasad (Dead) by LRs v. State of MP reported in AIR 2007 SCW 5589. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

4.3 It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgment or to give fresh reasonings, when the reasons assigned by the Court below are found to be just and proper. Such principle is laid down by the Apex Court in the case of State of Karnataka Vs. Hemareddy Alias Vemareddy and Another, , wherein, it is held as under:

This Court has observed in Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury, that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice.

4.4 Thus, in case the appellate court agrees with the reasons and the opinion given by the lower court, then the discussion of evidence is not necessary.

5. I have gone through the judgment and order passed by the trial court. I have also perused the oral as well as documentary evidence led by the trial court and also considered the submissions made by learned Counsel for the appellant.

6. I have perused deposition of Y.M. Shah, Branch Manager at Exhibit 13 and in his cross-examination, he has admitted that the validity of the cheque is six months from the date of issuance of cheque. Looking to the cheque Exhibit 4, the

date is 16.1.1995 and its validity was upto 17.7.1995. The cheque was deposited by the complainant on 16.1.1996. The bank has not shown any reason of invalidity of cheque at the time returning the cheque. He has admitted that the account of the accused was closed and therefore, there is no question for the bank to see other reason for passing the cheque. Therefore, it is very clear that as per the Sub-section (a) of Section 138 of the Negotiable Instrument Act, that the cheque shall be deposited in bank within the period of its validity. Therefore, requirements of Sub-clause (c) of Section 138 is not fulfilled. Therefore, the learned trial Judge has rightly come to the conclusion for acquittal of the accused and the reasons assigned by the learned trial Judge are just and proper.

7. Mr. Sikandar Saiyed, learned Counsel is not in a position to show any evidence to take a contrary view of the matter or that the approach of the trial court is vitiated by some manifest illegality or that the decision is perverse or that the trial court has ignored the material evidence on record.

8. In the above view of the matter, I am of the considered opinion that the trial court was completely justified in acquitting the respondent of the charges leveled against him.

9. I find that the findings recorded by the trial court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it.

10. I am, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the court below and hence I find no reasons to interfere with the same. Hence the appeal is hereby dismissed. Bail bond, if any, stands cancelled. Record and proceedings to be sent back to trial Court, forthwith.