

(2008) 04 DEL CK 0094
In the Delhi High Court
Case No : Criminal Appeal No. 121 of 1997

M.C.D.

APPELLANT

Vs

Shri Ashok Kumar

RESPONDENT

Date of Decision : 01-04-2008

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 332, 343, 344(1), 461

Citation : (2008) 04 DEL CK 0094

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : None, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Bhasin, J.—Appellant has preferred this appeal challenging the order dated 09.5.1996 passed by the learned Metropolitan Magistrate, Delhi in Complaint Case No. 111/92 whereby the respondent herein was acquitted of charge u/s 332 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the "Act").

2. Facts relevant for disposal of this appeal are that the appellant M.C.D. filed a complaint u/s 332/461 of the Act against the respondent alleging that on 23.6.92 during inspection by PW-3 he was found carrying out unauthorised construction in premises No. 3790, Tel Mandi Pahar Ganj, Delhi. It was alleged in the complaint that the respondent being the owner and builder of the unauthorised construction was given a show cause notice dated 24.06.92 (Ex.PW-1/B) under Sections 344(1) and 343 of the Act and the said notice was received by the respondent on 25.06.92. As per the case of the complainant the respondent gave a reply but it was not found to be satisfactory and so a complaint case was then filed in the trial Court. The trial Court gave a notice u/s 251 Cr.P.C. to the respondent-accused to which he pleaded not guilty and claimed trial.

3. Prosecution in order to prove its charges against the respondent examined

four witnesses in all. The respondent in his statement u/s 313 Cr.P.C. stated that he had no concern with the property in dispute and that he had not raised any unauthorised construction.

4. The learned trial Court after appreciating the evidence brought on record by the prosecution came to the conclusion that the prosecution had failed to establish that the respondent was responsible for the alleged unauthorised construction in any manner and so acquitted the respondent. Aggrieved thereby the appellant M.C.D. sought leave of this Court to challenge the impugned judgment of the trial Court which was granted. The respondent was thereafter informed of the admission of this appeal but he did not enter appearance.

5. There was no appearance in the matter from both the sides when the appeal was taken up for hearing which showed that the parties were not really interested in advancing any arguments and since the trial Court record was available with this Court I decided to dispose of the appeal on merits instead of dismissing it for non-prosecution.

6. While dealing with an appeal against acquittal the appellate Court has to keep in mind certain guidelines which have been laid down by the Apex Court in its decisions which had arisen out of judgments of acquittal. In *State of Punjab Vs. Ajaib Singh and Others*, , it was observed by the Hon''ble Supreme Court that:

11. ...It is well settled that in an appeal against acquittal, the appellate court is entitled to re-appreciate the evidence on record, but having done so it will not interfere with the order of acquittal unless it finds the view of the court acquitting the accused to be unreasonable or perverse. If the view recorded by the court acquitting the accused is a possible, reasonable view of the evidence on record, the order of acquittal ought not to be reversed.

In an earlier decision also which is reported as *Narinder Singh and Another Vs. State of Punjab*, , Hon''ble Supreme Court had observed as under:

12. The High Court while considering the appeal against acquittal is not exercising any extra ordinary jurisdiction. Its power to consider and decide the appeal against the judgment of acquittal is same as against the judgment of conviction. However, there are certain guidelines. One is that if there are two views on evidence which are reasonably possible one supporting acquittal and the other indicating conviction. High Court in an appeal against judgment of acquittal should not interfere merely because it feels that it would as a trial Court have taken a different view. High Court will certainly interfere if it finds that the judgment of acquittal is manifestly erroneous and that the trial Court has acted with material irregularity or its appreciation of evidence lacks coherence or it has made assumptions which are unwarranted or its evaluation of evidence is such as to shock the sense of justice and which has led to miscarriage of justice or its reasoning is unintelligible or defies logic or its conclusions are against the weight of the evidence.

7. Now, keeping in mind these views of the Supreme Court it is to be seen if the impugned judgment in the present case can be said to be unreasonable or perverse. The trial Court has acquitted the respondent for the charge under the Section 332 read with Section 461 of the Act on the ground that the complainant had failed to establish that the respondent was the owner of the unauthorised construction and that the House Tax record in respect of the property in question brought on record by the complainant itself showed that one Sadhu Narain was the owner. Another reason given by the learned trial Court for acquitting the respondent was that just because it had been stated by PW-3 in his evidence that at the time of his visit to the property in question he had found respondent present there he could not be convicted as his mere presence at the disputed site could at the most give rise to a suspicion against him but mere suspicion was not sufficient for his conviction. I have myself also gone through the evidence of the prosecution witnesses and have come to the conclusion that there is no perversity in the said reasoning of the learned trial Judge for acquitting the respondent-accused. The complainant itself had placed on record of the House Tax record of the property in question which shows that some Sadhu Narain was its owner. PW-4 Sh. Suresh Kumar who had proved the House Tax record categorically admitted in his cross-examination that Ashok Kumar, the respondent herein, was not the owner of the property in question. PW- 3 S.C. Goel is the Junior Engineer of M.C.D. who had visited the property in question on 23.6.92. He has simply claimed that he had noticed some unauthorised construction going on and at that time the respondent had met him there and he demanded sanction for the construction going on from the respondent. He further deposed that a show cause notice was given to the respondent to which he had submitted his reply but the same was found to be unsatisfactory being not supported by any proof. In cross-examination this witness stated that he did not know if the respondent accused was the owner of the property in question but he had come to know from the reply of the respondent-accused to the show cause notice that he was the owner. The prosecution has not placed on record the reply to the show cause notice allegedly given by the respondent admitting himself therein to be the owner of the property in question. No Explanation has been offered for non production of that reply which allegedly contained an admission of respondent-accused to the effect that he was the owner of the property in question and so for its non production it has to be inferred against the appellant that if that document had been produced it would have gone against the appellant's case that the respondent was the owner of the property in question. The respondent in his statement u/s 281 Cr.P.C. had categorically claimed that he had no concern with the property in dispute. In these circumstances, appellant-complainant could not be said to have established that it was the respondent who was the owner and/or builder of the unauthorised construction for which he was prosecuted. The learned trial Court has rightly acquitted him and there is no reason for interfering with the impugned judgment of acquittal.

8. In the result, this appeal is dismissed.