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**(2010) 02 GUJ CK 0093**  
**In the Gujarat High Court**  
**Case No : Criminal Appeal No. 552 of 2002**

Peoples Co-op. Credit Soc. Ltd.

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

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**Date of Decision :** 17-02-2010

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378  
Negotiable Instruments Act, 1881 (NI) — Section 138

**Citation :** (2010) 02 GUJ CK 0093

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

**Bench :** Single Bench

**Advocate :** Dilip B. Rana, for the Appellant; Mini Nair, APP, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Z.K. Saiyed, J.—The appellant-original complainant has filed the present appeal u/s 378 of the Code of Criminal Procedure, 1973 against the Judgment and order of acquittal dated 3/1/2002 passed by the learned Judicial Magistrate, Khambhat in Criminal Case No. 735 of 1997 whereby the accused was acquitted of the charges leveled against him.

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

2.1 The appellant society is a registered society under the Act and is engaged in doing co-operative activities including grant of loans to its members and the complainant is working as Manager of the society. The accused is a member of the appellant society, and by virtue of his being a member, he had applied for a short term loan of Rs. 5,000/- on 28/11/1996 and he was granted a short term loan of Rs. 4,000/- by the appellant society, and accordingly, a cheque No. 4224 dated 8/3/1997, drawn on the Cambay Hindu Merchant C-operative Bank Ltd., Khambhat Branch was given to the appellant society as a repayment of the loan amount. Said cheque was deposited in the Khambhat District Central Co-op. Bank Ltd., Khambhat by the appellant society on the same day i.e. on 8/3/1997.

On depositing the said cheque in the account of the appellant society, the bank informed about the dishonor of the cheque with the reason: "FUNDS INSUFFICIENT". On receipt of the letter from the bank, the appellant society gave notice on 19/3/1997 by Registered A.D. to the respondent No. 2 under the Negotiable Instruments Act, which was returned back undelivered with the endorsement refused. Thereafter the notice was given by U.P.C. on 15/4/1997 to the accused, but he did not reply to the said notice and also he did not pay the amount of the dishonoured cheque. Hence, the appellant society filed complaint u/s 138 of the Negotiable Instruments Act being Criminal Case No. 735 of 1997 before the Judicial Magistrate First Class, Khambhat. Accordingly the trial was initiated against the accused.

2.2 To prove the guilt against the accused the prosecution has examined three witnesses and in order to support the case, the prosecution has produced several documentary evidences.

2.3 At the end of trial, after recording the statement of the accused person u/s 313 of the Criminal Procedure Code and after hearing arguments on behalf of prosecution and the defence, learned Judicial Magistrate First Class, Khambhat by his Judgment and order dated 3/1/2002 has dismissed the complaint filed by the present appellant-original complainant and passed the order of acquittal in favour of the respondent-accused and thereby acquitted the respondent-accused of all the charges leveled against him.

2.4 Being aggrieved by and dissatisfied with the aforesaid Judgment and order passed by the learned Judicial Magistrate First Class, Khambhat, the appellant-original complainant has preferred the present appeal.

3. Learned advocate Mr. Dilip Rana for the appellant-original complainant contended that the judgment and order of the learned Judicial Magistrate is not proper, legal and it is erroneous. He has also contended that the judgment impugned 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, it is established that the prosecution has proved all the ingredients of the evidence against the present respondent-accused. He has also taken this Court through the oral as well as the entire documentary evidence. He submitted that from the complaint and judgment of the Court below, it is clearly established that the accused person was found committing offence punishable u/s 138 of the Negotiable Instruments Act. He further submitted that there was no reason for the learned Judicial Magistrate to disbelieve the prosecution case and to acquit the accused person.

4. At the outset it is required to be noted that the principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. In the case of M.S. Narayana Menon @ Mani Vs. State of Kerala and Another, the Apex Court has narrated about the powers of the High

Court in appeal against the order of acquittal. In para 54 of the decision, the Apex Court has observed as under:

54. In any event the High Court entertained an appeal treating to be an appeal against acquittal, it was in fact exercising the revisional jurisdiction. Even while exercising an appellate power against a Judgment of acquittal, the High Court should have borne in mind the well-settled principles of law that where two view are possible, the appellate court should not interfere with the finding of acquittal recorded by the court below.

4.1 Further, in the case of Chandrappa and Others Vs. State of Karnataka, the Apex Court laid down the following principles:

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, reappraise and reconsider the evidence upon which the order of acquittal is founded.

[2] The Code of Criminal Procedure, 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 emphasis 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 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.

4.2 Thus, 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.

4.3 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.

4.4 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.

4.5 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.

4.6 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 Advocate for the appellant-original complainant Mr. Dilip Rana. I have perused the reasonings given by the Court below.

5.1 The entire prosecution case rests on the statements of witnesses and

documentary evidences produced before the Court below. No doubt the prosecution has produced sufficient evidences before the learned Judicial Magistrate First Class to prove the case but the prosecution was not able to convince the Trial Court. It appears from the documentary evidence produced before the Trial Court that the prosecution has failed to prove the case beyond reasonable doubt. Today, before this Court also, learned advocate Mr. Dilip Rana is not in a position to convince this Court that the original complainant has followed the mandatory provisions of the Negotiable Instruments Act. It appears from the oral as well as documentary evidences produced before the Court below that the provisions of the Negotiable Instruments Act are not followed by the complainant which is fatal to the prosecution case. Hence it appears that there is serious lacuna in the prosecution case and the prosecution has failed to establish the case against the respondent-accused. Therefore the Trial Court has rightly passed the order of acquittal in favour of the accused and I do not find any reason to interfere with the said finding of the Trial Court.

5.2 Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt. Learned advocate for the appellant-original complainant 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.

6. In the above view of the matter, I am of the considered opinion that the Trial Court was completely justified in acquitting the respondent-accused of the charges leveled against him. 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. I am, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the court below and hence find no reasons to interfere with the same. Hence the appeal is hereby dismissed.