

(2016) 07 DEL CK 0027
In the Delhi High Court
Case No : Crl.A. No. 240 of 2013

Ravinder P. Kumar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 22-07-2016

Acts Referred:

Evidence Act, 1872 — Section 17

Penal Code, 1860 (IPC) — Section 420/34, 467, 468, 471

Citation : (2016) 159 DRJ 303 : (2016) 3 JCC 1806 : (2016) 3 RajdhaniLR 23

Hon'ble Judges : Ms. Pratibha Rani, J.

Bench : Single Bench

Advocate : In person, for the Appellant; Mr. Rajesh Mahajan, ASC with Ms. Parul Jamwal with SI Kishan Lal, PS Tilak Marg, Advocates and Mr. Manjeet Singh, Senior Advocate instructed by Mr. Tarjeet Singh and Mr. Yogendra Kumar Verma, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Pratibha Rani, J.—Crl.M.A. No. 10612/2013

Exemption allowed, subject to all just exceptions.

2. Application stands disposed of.

Crl.M.A. Nos.10609/2013 & 9287/2014 (preponement of hearing)

3. Appellant states that as the matter had been heard he does not press these two applications.

4. Both the applications are dismissed for having become infructuous and as not pressed.

Crl.M.A. No.10610/2013

5. The above captioned application has been filed by the appellant with the following prayer:

"to pass an appropriate order to the concerned police authority to take respondent No.2, 3 and 4 into custody by arresting them to uphold majesty of law, in the interest of justice."

6. In the instant application, the petitioner after giving the facts of the two criminal cases, has also made reference to the civil suit wherein a decree has been passed in his favour but not executed.

7. The ground on which direction to take respondents No.2 to 4 in custody has been sought is on their alleged wilful disobedience to furnish the bail bond as directed by this Court on 18.02.2013 while granting leave to appeal.

8. Perusal of the proceedings reveal that on 18.02.2013 in CrI.L.P. No.329/2010, following order was passed:-

"This leave to appeal petition was dismissed by this Court on 16th September, 2010 against which order the Petitioner filed a Special Leave to Appeal petition before the Hon"ble Supreme Court. The Hon"ble Supreme Court vide its order dated 27th July, 2012 observed as under:-

Leave granted.

We have heard the learned counsel for the parties.

We are of the considered opinion that the High Court ought to have decided the matter on merit as the right of appeal became available to the complainant only after the new amendment of the Code of Criminal Procedure which came into effect on 31.12.2009. In view of the above, the impugned order dated 16.9.2010 passed by the High Court is hereby set aside and the appeal filed by the complainant is restored to its original number to be decided on merits by the High Court.

The appeal is allowed accordingly."

Thus, the appeal is now required to be decided on merits. Leave is granted.

Petition is disposed of.

CrI.A. No????../2013 (On registration, the appeal was numbered as CrI.A. No.240/2013 i.e. the instant appeal.)

The Registry to number the appeal.

Admit.

List in due course.

During the pendency of hearing of the appeal, Respondent Nos. 2 to 4 will furnish their respective personal bond in the sum of Rs. 25,000/- with two sureties each of the like amount, subject to the satisfaction of the Registrar General of this Court within six weeks."

9. On 17.07.2013 while passing order on Crl. M.A. No.10450/2013 for reduction of sureties, this Court modified the bail order dated 18.02.2013 by directing reduction of surety from two to one. The bail bonds thereafter have been furnished and accepted by the Registrar General.

10. Since the respondents No.2 to 4 herein were acquitted by learned Trial Court, while granting leave to appeal, the bail order was passed on 18.02.2013 which was subsequently modified on 17.07.2013.

11. The order granting bail stands complied with. Hence, the instant application deserves dismissal.

12. The application is accordingly dismissed.

Crl.M.A. No.10611/2013 & Crl.M.A.No.12540/2014

13. Both these applications have been taken up together for disposal as the prayers made in the two applications are identical i.e. for procuring presence of respondents No.2 to 4 herein for purpose of recovery of forged seals pertaining to FIR No.240/2002 PS Patel Nagar.

14. The prayer made in Crl.M.A. No.10611/2013 is to the following effect:-

"to direct the concerned police authority to recover the forged seals possession of which was repeatedly admitted by the accused persons through their learned counsel before Id. A.S.J. on 13.08.2002 and 16.08.2002 as its non-recovery alone had become a reason for their acquittal under benefit of doubt."

15. Crl.M.A No.12540/2014 has been filed by the petitioner for summoning the respondents No.2 to 4 for recovery of forged seals as well as for disposal of Crl.M.A. Nos.10610-10611 of 2013 in view of the directions dated 27.07.2012 of Hon"ble Supreme Court. The prayer clause of the application reads as under :-

"All three accused in the present case may very kindly be summoned and directed to appear before this Hon"ble Court at the time of passing of order while disposing of pending CM Nos.10610-11 on 19.08.2014."

16. The order dated 27.07.2012 passed by the Supreme Court in Crl.A. No.1155/2012 arising out of SLP (Crl.) No.475/2011 has been extracted in para No.4 while disposing of Crl.M.A. No.10160/2013. The direction by Supreme Court is limited to the extent of hearing the appeal on merits.

17. Perusal of the appeal file shows that on 15.01.2014 the appeal was directed to be listed for hearing in due course at its turn. Thereafter on 30.05.2014 Crl. M.A. Nos.9287/2014, 10610/2013 & 10611/2013 were listed for 19.08.2014 for disposal when bailable warrants in the sum of Rs. 5000/- were issued against respondents No.2 to 4 returnable for 18.11.2014. Respondents No.2 to 4 appeared the Court on 18.11.2014 along with their counsel. Appellant though present on that date did not make any request for any direction to them about the purpose for which their personal appearance was sought.

18. Relying on the orders passed by learned ASJ on 13.08.2002 and 16.08.2002 while considering the applications filed by accused T.R.Biyani - respondents No.2 herein for seeking anticipatory bail, the appellant in these applications is seeking recovery of alleged forged seals. The proceedings before the learned ASJ and the order dated August 13, 2002 is to the following effect:-

13.8.02

Present :

Sh. Ghanshyam Sharma adv. for applicant. Addl. PP for State along with SI R.S. Meena.

Arguments heard.

Sh. Sharma submits that the applicant is ready to join the investigation and would get seal and counterfoils S.T. Forms recovered. Considering the submissions made, it is ordered that the applicant shall join the investigation as and when called to by the I.O. and shall co-operate in the recovery of aforesaid articles/objects. Adjourned for recovery of components/objects and for disposal of the application for 16.08.02. Till then the applicant be not arrested."

19. The subsequent proceedings dated 16.08.2002, 26.09.2002, 05.10.2002, 17.10.2002, 26.10.2002, 16.11.2002, 13.11.2002, 27.11.2002 record that part of the case property i.e. ST-Forms were recovered and the applicant had joined the investigation till his application seeking anticipatory bail was dismissed on 09.12.2002 by passing the following order:-

"9.12.02

Present : Sh. L.C. Jain APP for State along with IO SI Manoj Kumar.

Complainant Ravinder P.Kumar is present in person. Sh.G.S.Sharma Adv. for applicant.

Heard. On facts as submitted, there is no ground for anticipatory bail. The application is dismissed."

20. The submissions made by learned counsel for the petitioner while arguing on the application seeking anticipatory bail cannot be treated as confession by the accused persons. The recovery, if any, of the case property could be at the stage of investigation. After completion of investigation, charge-sheet was filed and trial commenced. The trial has concluded and resulted into acquittal. The respondents No.2 to 4 are duly represented by their counsel during hearing of this appeal and had also appeared in person. Now the appeal has to be heard but repeatedly submissions have been made by the appellant for taking the respondent Nos. 2 to 4 in custody for the purpose of recovery of the forged seals which cannot be allowed at this stage. This could have been done only at the stage of investigation carried out fourteen years ago.

21. Both the applications are hereby dismissed.

22. The appellant Ravinder P.Kumar has impugned the judgment dated 4th August, 2009 in case FIR No.240/2002 PS Patel Nagar by virtue of the newly amended provision i.e. proviso to Section 372 Cr.P.C.

23. The appellant herein was complainant in case FIR No. 240/2002, registered at PS Patel Nagar. Initially he filed a criminal complaint wherein, in exercise of the power under Section 156(3) Cr.P.C., learned MM directed the concerned police station to register FIR and investigate the matter.

24. After registration of FIR No. 240/2002 for commission of the offence punishable under Section 467/468/471/420/34 IPC, the charge-sheet was filed and trial commenced. Since all the accused persons who are respondents in this appeal pleaded not guilty to the charge, the prosecution examined 9 witnesses. The incriminating evidence was put to the respondent/accused during their examination under Section 313 Cr.P.C. DW-1 Ashok Kumar Gupta was also examined by the accused persons in their defence.

25. After trial all the accused persons have been acquitted by the learned Trial Court observing that the prosecution had failed to prove its case beyond reasonable doubt.

26. The complainant filed Criminal Leave Petition No.329/2010 with application seeking condonation of delay in filing the leave petition. Vide order dated 16th September, 2010 the prayer of the petitioner for condonation of delay was declined. The complainant filed SLP (Crl.) No.475/2011 which was allowed on 27th July, 2012 and following order was passed:

"Leave granted.

We have heard the learned counsel for the parties. We are of the considered opinion that the High Court ought to have decided the matter on merit as the right of appeal became available to the complainant only after the new amendment of the Code of Criminal Procedure which came into effect on 31.12.2009. In view of the above, the impugned order dated 16.9.2010 passed by the High Court is hereby set aside and the appeal filed by the complainant is restored to its original number to be decided on merits by the High Court.

The appeal is allowed accordingly."

27. Thereafter leave to appeal was granted by this Court on 18th February, 2013 and the leave petition was registered as Criminal Appeal 240/2013.

28. LCR has also been requisitioned and perused. The appellants and the respondents in addition to their oral submissions have filed written synopsis.

29. The contentions made by the appellant/complainant are:

(i) The offence of forgery with intent to cheat the appellant and thereby causing loss to him has been proved from the various Court orders which can neither be

over-ruled nor defended after this appeal has been admitted on directions of the Supreme Court.

(ii) The purpose of cheating was to cause loss to the Sales-Tax Department as well to the appellant.

(iii) Wrongful loss was also caused to the complainant as he had to pay the penalty to the Sales-Tax Department as by that time duplicate "C" Forms were issued, the same had become time barred.

(iv) The learned Trial Court despite noting that wrongful loss to the tune of Rs. 18,300 was suffered by the complainant, preferred to acquit them which is contrary to law.

(v) Despite his appeal being admitted by order of the Supreme Court, his prayer for recovery of the admitted case property vide C.M. No. 10611-12/2013 remains pending for one reason or the other on flimsy grounds.

(vi) Due to non-recovery of admitted case property i.e. forged seals, injustice has been done to the appellant.

(vii) The order of acquittal is erroneous and contrary to the provisions of the law.

30. Mr. Manjeet Singh, learned Senior Advocate of the respondents No.2 to 4 has contended that :-

(i) There is no evidence of forgery being committed by them qua Ex. PW-1/1 to Ex. PW-1/8.

(ii) The complainant has suppressed the fact of his wife being Director in M/s Adige Computers Pvt. Ltd. which he admitted during his cross-examination but without giving any explanation as to why she was not implicated as an accused in respect of Ex. PW-1/1 to Ex. PW-1/8 i.e. the counter foils.

(iii) Forms ST-35 may be valuable securities but not counter foils as it neither creates any right nor liability.

(iv) No complaint regarding forgery of Forms ST-35 or false claim of sales tax credit either by the accused persons or by the company i.e. M/s Adige Computers Pvt. Ltd. was made to Sales Tax Department which was competent to deal with such complaints.

(v) No further claim before or after issuance of duplicate Forms ST-35 on December 10, 2001 has been made by anybody in respect of Forms ST-35 corresponding to the counter foils Ex.PW1/1 to PW1/8 (pertaining to 1997-98).

(vi) The respondent No.3 Rajiv Sarda and respondent No.4 Sanjay Sarda never dealt with Forms ST-35 to M/s Adige Computers Pvt. Ltd. and had no role in the transactions.

(vii) They were also not signatory to the "C" Form being issued for two years i.e.

1996-1997 and 1997-1998.

(viii) PW-8 SI Manoj Kumar visited Goa and met Additional Commissioner, Sales Tax in connected with investigation of this case. Sales Tax officials confirmed issues of C-Forms in a jumbled form which was modified by them as the same was issued inadvertently. The investigating officer (PW-8) also received a letter dated January 22, 2003 from Goa Sales Tax Commissioner to this effect.

(ix) The letters Ex. PW-1/D and Ex. PW-1/E dated 1st July, 2001 written by the complainant do not mentioned any forgery being committed.

31. I have considered the rival contentions and carefully gone through the Trial Court Record.

32. In brief the case of the prosecution as detailed in the criminal complaint is that the appellant had business dealings with the respondents. The appellant was carrying on business of manufacturing TV cabinets as sole Proprietor of M/s R.K. Enterprises. He was also Managing Director of Company M/s Arcon Electroplast Pvt. Ltd.

33. The respondents herein were common Directors in the companies namely M/s Adige Computer Services Pvt. Ltd., M/s Sparrow Technologies Pvt. Ltd. and M/s Sparrow Micro Electronics Pvt. Ltd. During business transactions it was agreed that the appellant herein would be provided Forms ST-35 and "C" Forms in respect of the supplies made to the respondents.

34. The grievance of the appellant is that Forms ST-35 and valid "C" Forms were not furnished hence he approached the Sales-Tax office where respondent No.2 T.R. Biyani was called. However, respondent No.2 claimed that he had already furnished Forms ST-35 to the Accountant of the appellant who had put his signature and affixed seals on the reverse side of the counter-foils. The appellant was called by the Sales-Tax Officer (STO) and shown the counter-foils of the Forms ST-35 bearing the seals of his sole proprietorship concern as well private limited company. The seals and signatures both were disputed by him pointing out that while the registered office of the company was at East-Patel Nagar, the seal on the counter-foils were of the address at Manak Vihar, Delhi.

35. The respondent No.2 agreed to furnish duplicate ST-35 Form and for that purpose the appellant was asked to make a formal request. Thus a letter dated 7th December, 2001 was written by the complainant, which was received by respondent No.2 in presence of the STO. Thereafter on 7th December, 2001, respondent No.2 got recorded DD No. 38B at PS Naraina Vihar and a Non-Cognisable Report was recorded. Information about original Forms ST-35 being misplaced on 7th December, 2001 was also published in Punjab Kesari newspaper dated 9th December, 2001. Thus by getting a false report lodged and making a false declaration in respect of Forms ST-35, offence of cheating was committed.

36. In the criminal complaint the grievance was also made about furnishing

invalid "C" Forms for the supplies made in the year 1996-97, 1997-98 in jumbled form which was not acceptable to the Sales-Tax Department.

37. The appellant also claimed that despite request being made to issue "C" Forms financial year-wise, needful was not done as a result of which the complainant had to pay the penalty and the Sales-Tax due, thus causing huge financial loss to him.

38. After the matter was investigated, charges against the accused persons were framed on 16th August, 2005 for committing the offences punishable under Sections 467/468/471/420 IPC read with Sections 120B/34 IPC in respect of Forms ST-35. For non-supply of "C" Forms, financial year-wise, charge was framed for commission of the offence punishable under Section 420/34 IPC.

39. The learned Trial Court while dealing with the various charges has examined the evidence by classifying the offence under two heads:

(i) First incident pertaining to offence relating to Forms ST-35

(ii) Second incident regarding supply of C-forms in jumbled manner and not financial year wise.

40. After considering the testimony of the material witnesses especially PW-1 Ravinder P. Kumar, PW-3 R.P. Sharma who was the Sales-Tax Officer at the relevant time, PW-5 Anuj Garg, Chartered Accountant of the company, PW-6 Dayatri Dass, Accountant of the complainant, the learned MM had acquitted inter alia on following grounds:

In respect of first incident i.e. charge pertaining to forged seals and signature on the counter foil of Forms ST-35, the learned Trial Court noted as under:-

(i) PW-1, Sh.Ravinder P.Kumar, the complainant was having office at C-3, Manak Vihar Extension, Tihar Village, New Delhi-110018 though registered office was at 38/17 East Patel Nagar, New Delhi-110008 as mentioned on the letter exhibit PW-1/E written by the complainant (PW-1) himself. The seals on the counter foil were also having the address of C-3, Manak Vihar where complainant/PW-1 was having his office.

(ii) Signature on exhibit PW-1/1 to PW-1/8 alleged to be by the accountant, PW-6, Dayatri Dass were sent for examination at CFSL. The opinion received from the forensic expert was to the effect that it could not be conclusively said that the signatures on the questioned documents belonged to either accused No.1 T.R. Biyani or PW-6 Daitari Dass.

(iii) The forged seals were not recovered.

(iv) At the stage of grant of anticipatory bail, although submission was made by counsel for the respondent No.2 that petitioner would be for joining the investigation and cooperating in recovery of Forms ST-35 and the seals but seals were not recovered. Some seals produced by the accused before the

investigating officer were not seized as he found the same not tallying with the seals on the questioned counter foils of Forms ST-35.

(v) The seals used by PW-1, the complainant for his business were not produced for comparison and merely because the questioned counter foils of Forms ST-35 had address of Manak Vihar where the complainant had office, is not a ground for terming the seals as forged due to difference in address.

(vi) PW-6, Dayatri Dass, the accountant when questioned about the stamps of the Company, he gave an evasive reply that he did not remember of having any stamp (seal) with Manak Vihar address. He even did not remember having ever seen the stamps (seals) of the business concern of the complainant of Manak Vihar. All the respondents were well aware of the business address of PW-1 and if they wanted to forge the seal, it could have been with the address of the registered office rather than the branch office.

(vii) The handwriting comparison did not lead to any conclusive opinion about commission of any forgery.

(viii) PW-3, STO Sh. R.P. Sharma had testified that it was he who suggested to both the sides to get the duplicate form issued so that there is no loss caused to the State or to the dealer. It was due to his intervention that the respondent/accused completed the formalities for issuance of duplicate Forms ST-35. Both the parties were satisfied after the matter was resolved on issuance of duplicate Forms ST-35 and that all the formalities were completed by the parties to resolve the issues.

(ix) Lodging of non-cognisable report on 7th December, 2001 and publication in newspaper Punjab Kesri on 9th December, 2001 were made by the respondent/accused persons to resolve the issue of Forms ST-35 with a view to obtain duplicate form and not with any intention to commit cheating or forgery. These steps were taken consequent and subsequent to the request received vide communication dated 7th December, 2001.

(x) The fact that PW-2, the complainant himself had written a letter on 7th December, 2001 addressed to the respondents/accused in presence of the STO, at that stage he was not aggrieved with the alleged forgery on counterfoils otherwise he would have lodged a complaint instead of participating in the procedure for issuance of duplicate Forms ST-35.

(xi) Duplicate Forms ST-35 were issued by the Sales Tax Office leaving both the parties satisfied on the issue of non-supply of Forms ST-35 without causing loss to the exchequer.

Thus, giving benefit of doubt all the respondents were acquitted of the charges under Sections 467/468/471/420 IPC read with Section 120-B/34 IPC relating to counter foils of Forms ST-35 observing that conclusively it cannot be said that stamp and signature were forged.

41. In respect of the charge referred to as second incident relating to issuance of invalid C-forms, learned Trial Court has acquitted for the following reasons:-

(i) The parties were having business dealings with each other since the year 1996;

(ii) There is nothing on record to establish deception on part of the respondent-accused while giving one invalid C-forms for the years 1996-1997 and 1997-1998

(iii) Supply of C-forms was a contractual obligations arising out of the business relations and every breach of contractual obligations does not amount to criminal offence of cheating.

(iv) There is no evidence adduced by the prosecution to prove any inducement on the part of the accused persons at the time of entering into business transactions except that the appellant/complainant was persuaded to set up a plant in Goa by the accused persons whereas the offence of cheating relates to supply of one C-form for two financial years i.e. 1996-1997, 1997-1998.

(v) It is admitted case of prosecution that accused Nos.2 and 3 supplied ten C-forms at the same time out of which only one form showing the sales for the period 1996-97 and 1997-98 was found invalid as it was pertaining to two financial years.

(vi) It was pleaded to be an inadvertent mistake in the C-forms which was subsequently got corrected.

(vii) PW-6, Dayatri Dass, accountant of the complainant admitted that out of the ten C-forms supplied, only one C-form was faulty against which complainant had to deposit the penalty.

(viii) PW-8, SI Manoj Kumar deposed about his visit to the office of Additional Commissioner Sales Tax, Goa to make inquiry about the issuance of any duplicate C-forms to the sparrow group by Sales Tax Office and confirmation by the Sale Tax Office, Goa about issuance of one C-forms in jumbled form which were rectified by them as the same were issued inadvertently. He also deposed about receipt of letter dated 22nd March, 2003 to this effect from the Goa Sales Tax Commissioner.

(ix) Inadvertent mistakes in one out of ten C-forms would not amount to cheating and could not have the effect of ruining the business of the complainant.

42. On the basis of above reasoning, the learned Trial Court arrived at the conclusion that there was no element of deception while issuing C-forms as out of ten C-forms only one was in a jumbled form for the year 1996-97 & 1997-98. Though subsequently the mistake was rectified but by that time the period had expired resulting into paying of penalty by the complainant but that itself was not sufficient to prove the commission of the offence punishable under Section 420/34 IPC by any of the accused person.

43. The scope of interference by Court of Appeal against an order of acquittal has been examined by the Hon"ble Supreme Court in catena of judgments. In *Muralidhar @ Gidda and Anr. v. State of Karnataka*, noting the principals laid down in earlier decisions as early as 1951, in para no. 12 it was held as under: "12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in *Tulsiram Kanu v. State*, AIR 1954 SC 1, *Madan Mohan Singh v. State of U.P.*, AIR 1954 SC 637, *Atley v. State of U.P.*, AIR 1955 SC 807, *Aher Raja Khima v. State of Saurashtra*, AIR 1956 SC 217, *Balbir Singh v. State of Punjab*, AIR 1957 SC 216, *M.G. Agarwal v. State of Maharashtra*, AIR 1963 SC 200, *Noor Khan v. State of Rajasthan*, AIR 1964 SC 286, *Khedu Mohton v. State of Bihar*, (1970) 2 SCC 450, *Shivaji Sahabrao Bobade v. State of Maharashtra*, (1973) 2 SCC 793, *Lekha Yadav v. State of Bihar*, (1973) 2 SCC 424, *Khem Karan v. State of U.P.*, (1974) 4 SCC 603, *Bishan Singh v. State of Punjab*, (1974) 3 SCC 288, *Umedbhai Jadavbhai v. State of Gujarat*, (1978) 1 SCC 228, *K. Gopal Reddy v. State of A.P.*, (1979) 1 SCC 355, *Tota Singh v. State of Punjab*, (1987) 2 SCC 529, *Ram Kumar v. State of Haryana*, 1995 Supp (1) SCC 248, *Madan Lal v. State of J and K*, (1997) 7 SCC 677, *Sambasivan v. State of Kerala*, (1998) 5 SCC 412, *Bhagwan Singh v. State of M.P.*, (2002) 4 SCC 85, *Harijana Thirupala v. Public Prosecutor, High Court of A.P.*, (2002) 6 SCC 470, *C. Antony v. K.G. Raghavan Nair*, (2003) 1 SCC 1, *State of Karnataka v. K. Gopalakrishna*, (2005) 9 SCC 291, *State of Goa v. Sanjay Thakran*, (2007) 3 SCC 755 and *Chandrappa v. State of Karnataka*, (2007) 4 SCC 415. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

- (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court,
- (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal,
- (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and
- (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view.

The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

44. The main thrust of the appellant to seek conviction of the respondents No.2 to 4 is on the "admission" made at the stage of seeking anticipatory bail on behalf of the respondent No.2, T.R. Biyani by his counsel that he would get seal and counterfoils, S.T. Forms recovered, claiming it to be an admission on oath and sufficient to convict them. The orders dated 13.08.2002 and 09.12.2002 have been extracted in para 6 while disposing of CM Nos.10611/2013 & 12540/2014

45. Suffice it to record here that submission made by learned counsel for the respondent No.2/accused T.R. Biyani at the stage of anticipatory bail was with a prayer to seek protection against arrest assuring to join and cooperate in the investigation is neither admission nor confession. Various orders passed by learned ASJ while granting and extending protection against arrest recorded that he had joined and cooperated in the investigation.

46. The complainant (PW-1) or his Accountant (PW-6) had the personal knowledge about the seals used by them in business transactions. It was for the complainant to give the specimen of the seals being used by him in the ordinary course of business with respondents No.2 to 4 so as to mark the distinction between genuine seals and alleged fake seals on the counter foils. The submissions made by learned counsel for the respondent at the stage of anticipatory bail does not amount to confession. It is not the case of the appellant that in the application seeking anticipatory bail any admission about the forged seals being used on the counter foils of Forms ST-35 was made by the accused. Undisputedly wife of the appellant/complainant was also one of the Directors in M/s. Adige Computer Service Pvt. Ltd. in which respondent Nos. 2 to 4 herein were Directors. The business dealing was between the two companies and the fact that his own wife was one of the Directors speak about the business relations between the two companies.

47. The fact that the application for anticipatory bail was declined by learned ASJ could be the only consequence to follow on failure of the respondents herein to get the alleged forged seals recovered.

48. After dealing with the contentions of the petitioner for considering the "admission" made before learned ASJ at the stage of prayer for release of anticipatory bail by accused T.R. Biyani - respondent No.2 herein, for decision of this appeal it is necessary to re-appreciate the evidence that has been adduced before the learned Trial Court in the form of two letters Ex.PW1/D and PW1/E written by appellant as Managing Director of M/s. Acron Electroplast Pvt. Ltd. and as sole proprietor of M/s. R.K.Enterprises respectively, statement of PW-3 Sh.R.P. Sharma - Sales Tax Officer in whose presence this issue was taken up and resolved as well the FSL result.

49. The letter dated 7.12.01 exhibit PW-1/D requesting for issuance of Form

ST-35 is on the letter head of M/s Arcon Electroplast Pvt. Ltd. having the two address i.e. C-3, Manak Vihar Extension, Tihar Village, New Delhi-110018 and 38/17 East Patel Nagar, New Delhi-110008 and addressed to M/s. Adige Computer Service Pvt. Ltd. for attention of Mr. T.R.Biyani, Director, regarding non-receipt of ST-35 forms pertaining to the year 1997-98 & 1998-99. The relevant contents of letter Ex.PW1/D are extracted as under:-

"7/12/01

You have informed us before the STO ward 104 that you have issued the following forms:-

Form No.

Year

Amount

05AA 689785

1997-98

361900/-

05AA 967100

1998-99

397427/-

Thanking you,

Sd/-

Director

for M/s Arcon Electroplast Pvt. Ltd."

50. The letter exhibit PW-1/E dated 7.12.01 is on the letter head of R.K.Enterprises sole proprietorship concern with both the addresses i.e. of East Patel Nagar as also of Manak Vihar. Contents of letter Ex.PW-1/E is also identically worded as letter Ex.PW1/D given by him to the STO ward No.104 except the different in details of Forms ST-35 and the six transaction with their amount. This communication has been signed by PW-1, the appellant herein as proprietor of M/s. R.K.Enterprises.

51. The statement of PW-3 Sh.R.P.Sharma, who was posted as STO at the relevant time, during his cross examination by State on 15th March, 2007 is as under:

"I have seen the summoned record of Sales Tax office Ward No.104 pertaining to Adige Computer Services (P) Ltd., A-29, Naraina Industrial Area, Phase-I, New Delhi. It is correct that on 29.11.01 I was Sales Tax Officer at Ward No.104,

Bikrikar Bhawan, New Delhi. It is correct that on 29.11.01 I received an application EXPW3/A (in the sales tax file) from Shri R.P. Kumar, Proprietor R.K. Enterprises regarding the non issuance of ST-35 forms by M/s Adige Computer Service. It is correct that on 7.12.01 I called Shri T.R. Biyani Proprietor M/s Adige Computer Service and R.P. Kumar Proprietor M/s R.K. Enterprises to my office through Inspector for getting the matter resolved. It is correct that T.R. Biyani accused in the present case had stated that he had already given ST-35 forms to R.P. Kumar and he also further stated that on the counterfoil of the aforesaid ST-35 forms he got the signature of the dealer/accountant of R.P. Kumar. It is correct that on the same day the accountant of R.P. Kumar was also present along with him. It is correct that accused T.R. Biyani produced the counterfoil 8 ST-35 forms on which according to him he had got the signatures of the dealer/accountant on the back side of the said forms. (The said 8 ST-35 forms are shown to the witness who correctly identifies them to be the same that was produced by the accused T.R. Biyani on the said day before him. They are EXP1 to EXP8). It is correct that R.P. Kumar and his accountant told that the signature on the back side of all the ST-35 forms does not pertain to their accountant. It is wrong to suggest that the complainant R.P. Kumar said that the address mentioned on the back side of the ST-35 forms is not correct. Again said that I do not remember. Accused T.R. Biyani at the time of applying/requesting for the duplicate ST-35 forms had not stated to me that as a matter of fact ST-35 forms had not been issued by him in favour of the complainant. Rather I had suggested the accused T.R. Biyani and the complainant that let duplicate ST-35 forms be got issued so that neither there is revenue loss nor the dealer/complainant will suffer any loss. In respect of utilisation of aforesaid 8 ST-35 forms T.R. Biyani Proprietor M/s. Adige Computer Service had given due declaration in form ST-2B EXPW3/B to EXPW3/3. In view of the above said declaration STO office issued fresh ST-35 forms for utilisation in the succeeding years. The said fresh ST-35 forms were issued by me and issue sheet no.99 in that respect is EXPW3/F. These exhibits are available in the sale tax file which has been retained by the Court. On 7.12.01 T.R. Biyani filed an indemnity bond along with NCR regarding the loss of aforesaid ST-35 forms. The indemnity bond and the photocopy of the NCR, both the documents are collectively EXPW3/G. Thereafter the loss of aforesaid ST-35 forms was circulated to all the STO offices through computer."

52. The conclusion by given by the FSL on the questioned documents marked Q-1 to Q-8 and the specimen writing of T.R. Biyani as well as English signature, S-4 to S-7 of the Daytri Dass, Accountant of the complainant, PW-6 is to the following effect:-

"Considerable time and labour has been spent for examination of questioned writings, short signatures, marked Q-1 to Q-8 with the specimen writings marked S-1 to S-3 but it has not been possible to express any opinion on Q-1 to Q-8 in comparison with S-1 to S-3.

The model and design of the short signatures, writings in the red enclosed

portions stamped and marked Q-1 to Q-8 are not technically comparable with the model and design of the signatures in the red enclosed portion similarly stamped and marked S-4 to S-7."

53. In the present case, the learned Trial Court acquitted respondents No.2 to 4/ accused persons on the evidence that process was initiated for issuance of duplicate Forms ST-35 to resolve the issue as suggested by PW-3 R.P. Sharma - the Sales Tax Officer. The process was initiated on two written requests being made by the complainant vide letters dated 7th December, 2001 to T.R. Biyani - respondent No.2 who thereafter took further steps i.e. lodging of non-cognisable report on the same date at PS Naraina Vihar vide DD No. 38B and publication in newspaper Punjab Kesari. The purpose behind was to resolve the issue without causing any loss either to the Government or to the concerned party. Admittedly the complainant had given the written requests in deliberation with the concerned Sales Tax Officer on 7th December, 2001 and procedure for issuance of duplicate Forms ST-35 was undertaken by T.R. Biyani - respondent no.2.

54. Similarly in respect of second incident pertaining to one out of ten C-Forms supplied, the mistake was pleaded to be inadvertent and the said mistake was only an irregularity and not an illegality so as to make it culpable. This fact was confirmed even by the Sales Tax Department, Goa and the mistake was also rectified.

55. The learned Trial Court has rightly come to the conclusion that while supplying ten C-Forms one out of that for the year 1996-1997, 1997-1998 was for two financial years but this being an irregularity was not sufficient to hold the accused No.2 and 3 guilty for the offence punishable under Section 420/34 IPC

56. The evidence adduced before the learned Trial Court in respect of the two incidents on the issue of using forged seals on the counter foils and supply of C-forms in jumbled form for two years was rightly considered by the learned Trial Court as not sufficient to prove their culpability beyond reasonable doubt so as to convict any of the respondents for the offences for which they have been charged.

57. On re-evaluation of the evidence and the finding recorded by the learned Trial Court, the grounds on which the learned Trial Court has based its conclusion, the order of acquittal does not warrant any interference by this Court in exercise of appellant jurisdiction.

58. The appeal is dismissed.

59. Trial Court Record be sent back along with copy of this order.