

(2022) 06 TEL CK 0031
In the Telangana High Court
Case No : Criminal Appeal No. 100 Of 2020

State Of Telangana

APPELLANT

Vs

Gali Venkateswarlu

RESPONDENT

Date of Decision : 08-06-2022

Acts Referred:

Indian Penal Code, 1860 — Section 420
Code Of Criminal Procedure, 1973 — Section 174

Citation : (2022) 06 TEL CK 0031

Hon'ble Judges : K.Surender, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. The present appeal is filed questioning correctness of the reversal judgment vide Crl.Appeal No.5 of 2016 dated 5.07.2019 setting aside the conviction judgment in C.C.No.120 of 2011 convicting the respondent/accused for the offence punishable under Section 420 of IPC.

2. The State is further aggrieved by the order of directing the State to pay compensation of Rs.25,000/- to the respondent/appellant/accused which shall be recoverable from the officer who investigated the case and filed charge sheet.

3. Briefly, the facts of the case are that the respondent/accused borrowed an amount of Rs.50,000/- from the defacto complainant-P.w.1 and executed a registered mortgage deed, mortgaging his house vide document No.4871 of 2004 in favour of the defacto complainant/P.W.1. Since the respondent/accused failed to repay, a civil suit OS No.618 of 2006 was filed by the defacto complainant to recover the money from the respondent/accused. In the written statement filed by the respondent/accused, it was mentioned that the house which was mortgaged in favour of P.W.1 was an assigned property in favour of his grand father and for the reason of his mortgaging the property having knowledge that it is an assigned property, the respondent/accused has committed an act of cheating punishable under Section 420 of IPC and

accordingly, learned Magistrate recorded conviction.

4. In Criminal Appeal No.5 of 2016 filed by the respondent/accused before the learned Principal Sessions Judge, Khammam, learned Sessions Judge reversed the judgment of conviction recorded by the learned Magistrate on the following grounds:

i) The entire case rests upon the fact that patta was granted in favour of the grand father of the accused and further in the patta dated 04.03.1954 it is mentioned that Laoni Rules relating to grant of house sites stipulates right of alienation after a fixed period. However, the very basic document was not placed on record by the prosecution;

ii) As seen from the document executed by the respondent/accused his only claim is that he is the owner of the property and in possession and there is an obligation on the part of P.W.1-defacto complainant to verify the title before mortgage was obtained;

iii) The evidence on record shows that the suit filed for recovery was decreed in his favour and execution petition was also filed by P.W.1. When the Civil Court has decreed in favour of P.W.1, it means that the transaction is not hit by any prohibition under any law. Without considering fact that the dispute is purely civil in nature, the investigating officer had filed prosecution leading to unnecessary mental agony, for which, investigating officer is liable to compensate the respondent/accused and accordingly granted compensation of Rs.25,000/-.

5. As seen from the finding of the learned Sessions Judge, there cannot be any amount of doubt that the transaction was purely a civil transaction and in the back ground of civil court ordering execution. Pursuant to decreeing the suit in favour of P.W.1, it cannot be said that there is an element of false statement pursuant to which, P.W.1 was induced into parting with money. The basic ingredients of Section 420 of IPC are not attracted for which reason, the acquittal recorded by the Sessions Court cannot be interfered with. However, learned Sessions Court finding fault with the investigation and consequently filing the charge sheet, Investigating Officer was directed to compensate the respondent/accused for his sufferance by paying an amount of Rs.25,000/-.

6. The Hon'ble Supreme Court in the case of Radhakrishna Nagesh v. State of Andhra Pradesh (2013) 11 supreme court Cases 688 and also in the case of Guru Dutt Pathak v. State of Uttar Pradesh (2021) 6 Supreme Court Cases 116 held that under the Indian criminal jurisprudence, the accused has two fundamental protections available to him in a criminal trial or investigation. Firstly, he is presumed to be innocent till proved guilty and secondly that he is entitled to a fair trial and investigation. Both these facets attain even greater significance where the accused has a judgment of acquittal in his favour. A judgment of acquittal enhances the presumption of innocence of the accused and in some cases, it may even indicate a false implication. But then, this has to be established on record of the Court.

7. In Guru Dutt Pathak's case (supra), the Hon'ble Supreme Court held as follows:

"15. In Chandrappa v. State of Karnataka [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] , this Court reiterated the legal position as under :

(SCC p. 432, para 42)

'42. ... (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 emphasise 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."

8. The Investigating Officer, on the basis of material available with him had filed the charge sheet alleging offence under Section 420 of IPC. It is the exclusive domain of the Court concerned either to take cognizance of the offence on the basis of the allegations leveled by application of mind. In the present case, the cognizance was taken and conviction was also recorded by the concerned Magistrate Court. In the said circumstances, it cannot be said that the Investigating Officer had either mislead the court in any manner. It is the prerogative of the Investigating Officer to submit his findings before the court concerned under Section 174 of Cr.P.C by filing a final report or charge sheet, which is used in common parlance. The Courts are always at liberty to draw their own conclusions on the basis of final reports filed by the police and not in any manner bound by the findings of the Investigating Officer's investigation.

9. In the said circumstances, the compensation directed to be paid by the State

and to be recovered from the Investigating Officer is hereby set aside.

Accordingly, the Criminal Appeal is disposed off. As a sequel thereto, miscellaneous petitions, if any, shall stand closed.