

State Vs. M.S. Neseeri

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Court : Mumbai

Decided On : Feb-01-1956

Reported in : AIR1956Bom529; 1956CriLJ982

Judge : Gajendragadkar and ;Gokhale, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 417 and 423; Bombay Lotteries and Prize Competitions Control and Tax Act, 1948 - Sections 4(1)

Appeal No. : Criminal Appeal No. 1214 of 1955

Appellant : State

Respondent : M.S. Neseeri

Advocate for Def. : A.A. Peerbhoy, ;A.A. Omer and ;A.M. Salik, Advs.

Advocate for Pet/Ap. : A.A. Mandgi, Asst. Govt. Pleader

Judgement :

Gajendragadkar, J,

1. This is an appeal by the State against the order of acquittal passed by the learned Judicial Magistrate, First Class, Chalisgaon, in favour of the respondent. The respondent was charged, under Section 4(1)(c), Bombay Lotteries and Prize Competitions Control and Tax Act, 1948. The case against him was that whilst he was working as Sub-Registrar at Bhadgaon he used to sell tickets of a lottery run

by one P. D. Charity Fund of the Imperial Trading Co. of Calcutta to the persons who came to his office for the registration of their documents.

In support of this case the prosecution relied on the evidence of four witnesses Daulat Patil, peon Pandit, Kaushal Patil and Shripat Patil Daulat stated that he had purchased a two rupee ticket from the accused while the three other witnesses stated, that they had taken one such ticket each.

Besides, the prosecution relied upon the statement made by the accused before the Prant Officer during the course of the departmental enquiry held under the orders of the Collector. They also relied upon a postal receipt which showed that the accused had addressed by post a registered letter to the Imperial Trading Co., 54, Canning Street, Calcutta.

The learned Magistrate took the view that the statement made by the accused before the Prant Officer could not be admitted in evidence because it had been made by him to his superior officer and it was made under circumstances which induced the accused to believe that if he made such a statement no further action would be taken against him.

The learned Magistrate felt that the account given by the four witnesses suffered from such serious discrepancies that it could not be accepted as proving the charge beyond a reasonable doubt. That left only the postal receipt and the learned Magistrate thought that the postal receipt may raise a suspicion against the accused, in the absence of satisfactory evidence, the accused must be given the benefit of doubt. It is on these findings that he acquitted the accused of the offence charged.

2. In dealing with an appeal against the order of acquittal we must now apply the test laid down by the Supreme Court. It is not enough for the state to show that on proper appreciation of the evidence the conclusion of the trial Magistrate would appear to be unreasonable. The fact that on examining the evidence we might have come to a different conclusion cannot justify our interference with an order of acquittal.

In dealing with an appeal against the order of acquittal we must in effect take into account the double presumption of innocence; and this double presumption of innocence can be rebutted successfully by the State in an appeal against acquittal only where it is shown that there are substantial and compelling reasons to interfere with the conclusion of the learned Magistrate.

In the present case it is all a question of appreciating the oral evidence and the only argument which the learned Assistant Government Pleader is able to urge is that the discrepancies pointed out by the learned Magistrate are not major, as he thought, but minor. The question as to whether the oral evidence given by witnesses should be believed or not is a pure question of fact and though in some cases it may be possible for the learned Assistant Government Pleader to satisfy us that the learned Magistrate may have exaggerated the importance of the discrepancies on which he has commented, that by itself would not in our opinion amount to a compelling reason for our interference with the order of acquittal.

Where the case depends only on the appreciation of oral evidence and the learned Magistrate has disbelieved the oral evidence and has given reason in support of his conclusion, we do not think we would normally be justified in appreciating the evidence again for ourselves with a view to decide whether the conclusion recorded by the learned Magistrate on such oral evidence is well founded or not. Therefore we must hold that in the absence of any compelling or substantial reason it would not be open to us to re-appreciate the evidence in this case.

The statement made by the accused in the departmental enquiry has been rightly excluded and the oral evidence given by the four prosecution witnesses no doubt suffers from several discrepancies. Therefore, we are left only with the postal receipt. The postal receipt considered with the weak prosecution evidence has been rejected by the learned Magistrate as insufficient for proving the prosecution case beyond a reasonable doubt. We do not therefore propose to interfere with that conclusion.

3. The result is that the appeal must be dismissed and the order of acquittal confirmed.

4. Appeal dismissed.

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