

State, Dy. Chief Controller of I. and E. Vs. V.R. Parekh

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Court : Chennai

Decided On : Feb-13-2001

Reported in : 2001(131)ELT549(Mad)

Judge : K. Natarajan, J.

Acts : Imports and Exports Act, 1947 - Sections 5, 47 and 467

Appeal No. : Criminal Appeal No. 859 of 1990

Appellant : State, Dy. Chief Controller of I. and E.

Respondent : V.R. Parekh

Advocate for Pet/Ap. : Public Prosecutor

Disposition : Appeal dismissed

Judgement :

K. Natarajan, J.

1. This criminal appeal has been preferred by the State by the Deputy Chief Controller of Imports and Exports, Madras represented by the Public Prosecutor against the judgment of acquittal, dated 29-1-1990 in E.O.C.C. No. 829 of 1984 on the file of the Additional Chief Metropolitan Magistrate (E.O.I.), Madras.

2. The case of the prosecution in brief is :

The Madura Coats Private Limited, Madras is a registered company dealing in the manufacture of readymade garments and embroidery threads and are exporting the same to other countries. To give an incentive, the said company was permitted to import any goods other than the one in Appendix-VI which are banned items. In the year 1979, the said company submitted applications to import certain items of goods. However, the said applications have been rejected on technical grounds. Exs. P.2 to P. 161 are the applications submitted by the said company for the licence and the connected correspondence. Thereafter, the Madura Coats Company contacted the accused who was working as an agent and sought his help to get the licence. It appears he has assured the said company to get the licence and an agreement was entered into between the respondent/accused and the said company, under which the company has to get a profit of 60% and the respondent 40%. Ex. P. 320 is the agreement. As suggested by the respondent, the Madura Coats Company again applied for the licence and the respondent got 17 licences on behalf of the company. However, it is alleged that special endorsements were made on the 17 licences under which banned items like liquid paraffin including pharmacopoeial grade and special types of petroleum jellies were permitted to be imported and that the said special endorsements were alleged to have been signed by P.W. 19, the then Joint Chief Controller of Imports and Exports, New Delhi. For obtaining special endorsements, the procedure is applications have to be submitted to the Delhi office to incorporate the special endorsements in the licences and only the Delhi office can make the said special endorsements. But no endorsements were made by the Delhi office and they were subsequently found to be forged. In pursuance of the said 17 licences, goods including liquid paraffin, pharmacopoeial grade and special types of petroleum jellies were imported. However, on verification, it was found by the officials of the Imports and Exports office at Madras that the special endorsements have been forged and the goods have been intercepted and seized in the Madras Harbour and two other places. P.W. 13, the Assistant Chief Controller attached to the office of the Imports and Exports, Madras office lodged the complaints, Exs. P. 316 to P. 318. On the said complaints, the Managing Director of Madura Coats Private Limited, one Mr. N.L. Kirby and the respondent have been interrogated. It appears the investigating officer was satisfied with the explanation given by the Managing

Director that he was not aware of the fact that forged documents have been used and the company has nothing to do with the documents containing the forged signatures of P.W. 19. On the said explanation, the Madura Coats Company had been deleted. Subsequently the investigation had been handed over to the Central Bureau of Investigation. On the completion of the investigation, the CBI laid a chargesheet against the respondent and another accused who was A.2.

3. On the petition filed by the second accused, this Court has quashed the charge against A.2 and the respondent alone stood trial for the offence complained of. Charges under Section 5 of the Imports and Exports Act for violating the conditions and under Section 47 read with 67 of the Act were framed against the respondent/accused. The learned Special Judge for Economic Offences (EOI) conducted the trial. 250 witnesses were examined on the side of the prosecution and 410 documents were exhibited. On the side of the respondent, one witness, namely, an handwriting expert was examined and 16 documents were marked.

4. The learned trial Judge, on an appreciation of the evidence placed before him, came to the conclusion that as per the agreement, Ex. P. 320 entered into between the Madura Coats Private Limited and the respondent, the Madura Coats Private Limited is a beneficiary in respect of the major portion of the profit and the Madura Coats ought to have been arrayed as an accused and there is no convincing evidence as to who forged the special endorsements in the 17 licences. Though the handwriting expert examined on the side of the prosecution, namely, P.W. 37 had stated that the signature in the special endorsements in all the 17 licences examined by him is not the signature of P.W. 19 and they have been forged, D.W. 1, on a comparison of admitted signature of P.W. 19 found in a counter affidavit filed in a writ petition in the Bombay High Court and the disputed signature, opined that the admitted signature tallies with the disputed signature and the same person has signed the documents. D.W. 1 had examined only 4 licences out of the 17 licences. At the trial, the learned special Judge took into consideration the opinion expressed by D.W. 1 in respect of two licences. The learned trial Judge was also of the view that the investigating officer, P.W. 50 has not given any satisfactory explanation as to why the Madura Coats Private Limited has been deleted from the chargesheet. Ultimately, the learned trial Judge was of

the view that there are suspicious circumstances which have not been properly explained by the prosecution and acquitted the respondent/accused, the correctness of the same is being canvassed in this appeal.

5. The learned Counsel for the appellant submitted that the learned trial Judge has committed an error in acquitting the respondent/accused holding that there is no acceptable evidence to show the person who has forged the signatures of P.W. 19 in the special endorsements on the 17 licences. There is also no convincing proof as to who had affixed the seals available in the special endorsements.

6. From the submissions made by the learned Counsel for the appellant, I find it difficult to agree with the contention that the learned trial Judge has appreciated the evidence from a wrong angle and his conclusion is perverse or that it is not a reasonably possible view. It is not the case of the appellant the material evidence has been omitted to be considered by the learned trial Judge and the same lead to a wrong conclusion.

7. It is settled law that the High Court will not interfere in an order of acquittal recorded by a lower Court unless there are circumstances to show that the conclusion of the learned trial Judge is perverse or it is not a reasonably possible view and that material evidence on record has been omitted to be considered. If any authority is needed. I may refer to the decision of the Supreme Court reported in 1996 SCC 1192 (Dhanna v. State of M.P.), where in paragraph 11, it has been held :

'11. Though the Code does not make any distinction between an appeal from acquittal and an appeal from conviction so far as powers of the appellate Court are concerned, certain unwritten rules of adjudication have consistently been followed by Judges while dealing with appeals against acquittal. No doubt, the High Court has full power to review the evidence and to arrive at its own independent conclusion whether the appeal is against conviction or acquittal. But while dealing with an appeal against acquittal the appellate Court has to bear in mind,; first, that there is a general presumption in favour of the innocence of the person accused in criminal cases and that presumption is only strengthened by the acquittal. The second is, every accused is entitled to the benefit of reasonable doubt regarding

his guilt and when the trial Court acquitted him, he would retain that benefit in the appellate Court also. Thus, the appellate Court in appeals against acquittals has to proceed more cautiously and only if there is absolute assurance of the guilt of the accused, upon the evidence on record, that the order of acquittal is liable to be interfered with or disturbed. [Durgacharan Naik v. State of Orissa Caetano Piedade Fernandes v. Union Territory of Goa, Daman and Diu Tota Singh v. State of Punjab Awadhesh v. State of M.P. and Ashok Kumar v. State of Rajasthan]'.

The same is the view expressed in the decision in Ramesh Babulal Doshi v. State of Gujarat 1996 SCC 972 it has been observed :

'7. Before proceeding further it will be pertinent to mention that the entire approach of the High Court in dealing with the appeal was patently wrong for it did not at all address itself to the question as to whether the reasons which weighed with the trial Court for recording the order of acquittal were proper or not. Instead thereof the High Court made an independent reappraisal of the entire evidence to arrive at the above quoted conclusions. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions....'

In my opinion, the principle of law laid down in the above two decisions squarely applies to the facts of the present case. On a careful perusal of the judgment of the trial court and the exhibits brought on record, I am clearly of the opinion that

the reasons given by the trial Court is cogent and convincing and, therefore, there is absolutely no ground or reason to interfere with the order of acquittal recorded by the trial Court.

8. In the result, the judgment of acquittal recorded by the trial Court is confirmed and the appeal is dismissed.

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