

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 8761 of 2022
In R/CRIMINAL APPEAL NO. 973 of 2022****With
R/CRIMINAL APPEAL NO. 973 of 2022****RAYMA ADHAM SELA
Versus
STATE OF GUJARAT**

Appearance:

MR G R MANAV(6064) for the Applicant(s) No. 1
for the Respondent(s) No. 2,3,4,5
MS CM SHAH APP for the Respondent(s) No. 1**CORAM:HONOURABLE MR. JUSTICE S.H.VORA
and
HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN**

Date : 21/07/2022

**ORAL ORDER
(PER : HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN)****ORDER IN R/CRIMINAL MISC.APPLICATION NO. 8761 of 2022:-
(For Leave to Appeal)**

1. RULE. Ms.C.M. Shah learned APP waives service of notice of rule for and on behalf of the respondent No.1 – State of Gujarat.

2. An application is filed for leave to appeal under section 378(4) of the Code of Criminal Procedure filed by the applicant – original claimant challenging the legality and validity of the judgement and order dated 10/03/2022 passed by the learned Additional Chief Judicial Magistrate, Nakhtrana, Kutch in Criminal Case No.167 of 2018, whereby the learned Magistrate was pleased to acquit the

respondent accused by giving benefit of doubt from the offences punishable under sections 406, 465, 467, 468, 471, 114 and 120(B) of Indian Penal Code.

3. It is pertinent to note that the applicant is the complainant / victim in the case in question and hence, there is no requirement of filing application for leave to appeal as held by the Hon'ble Apex Court in the case of ***Mallikarjun Kodagali (Dead) represented through legal Representative Versus State of Karnataka***, reported in ***(2019) 2 SCC 752***. Hence, the present application stands disposed of.

ORDER IN R/CRIMINAL APPEAL NO. 973 of 2022:-

Heard Mr.Manav, learned advocate for the appellant for admission of the Appeal.

1. Present appeal has been filed by the appellant – State of Gujarat under section 378(4) of the Code of Criminal Procedure challenging the legality and validity of the judgement and order dated 10/03/2022 passed by the learned Additional Chief Judicial Magistrate, Nakhtrana, Kutch in Criminal Case No.167 of 2018, by which the learned Magistrate was pleased to acquit the respondent accused by giving benefit of doubt from the offences punishable under sections 406, 465, 467, 468, 471, 114 and 120(B) of Indian Penal Code.

2. Factual matrix of the dispute between the parties raised in Criminal Case No.167 of 2018 are that the complainant filed a criminal complaint dated 03/03/2011 for the offence punishable under sections 406, 465, 467, 468, 471, 114 and 120(B) of Indian Penal Code before the learned Judicial Magistrate, First Class, Nakhtrana, Kutch vide Criminal Inquiry No.4 of 2011 wherein the learned Magistrate was pleased to pass an order of inquiry under section 202 of the Code of Criminal Procedure by the Dy.S.P. or Investigating Officer on 14/10/2011 and notice was issued to the complainant. Thereafter, as the complainant remained absent before the Court on many occasions, the complaint was dismissed under section 236(1) of the Code of Criminal Procedure and the accused were acquitted while passing order below Ex.1 dated 17/07/2014. The said order was challenged by the original complainant in the Sessions Court by filing Criminal Revision No.84 of 2014 wherein learned 5th Additional Sessions Judge was pleased to allow revision application and Criminal Case No.340 of 2012 which was dismissed by the learned Magistrate Court, was restored to file of the learned Judicial Magistrate, First Class, Nakhatrana and was renumbered as Criminal Case No.167 of 2018. Process was issued against the accused, Charge was framed and evidence was recorded. The matter was tried by the learned Judicial Magistrate, First Class, Nakhatrana. After the evidence of the complainant was over, hearing the parties

and after the evidence was concluded, Further Statement of the accused were recorded and hearing the parties, the Court came to the conclusion that the case is not proved beyond reasonable doubt and therefore, benefit of doubt was given on 10/03/2022 by the learned Additional Chief Judicial Magistrate, Nakhtra, which is under challenged.

3. We have heard Mr.G.R. Manav, learned advocate for appellant for admission of the Appeal. It is submitted that the trial court has committed an error in acquitting the respondent Nos.2 to 5 – original accused though the offences are committed by the accused. It is also submitted that the trial court has not considered the provision of law, record and evidence which has been adduced by the complainant in support of his case. It is also submitted that the trial court has not appreciated the fact that original land and house owners namely Judel Abdulla Mandhara and Hamir Kuddhar Mandhara were migrated to Pakistan in the year 1971-72 as the case was pending against them before the Lakhpat Police Station vide CR No.21 of 1976 and at the relevant point of time, the District Collector passed an order to take the land and house of the migrated persons as per the administration of Evacuee Property Act. As the aforesaid revenue entry was not recorded, taking the benefit of same, the respondent Nos.2 to 5 prepared forged and fabricated documents to show that they are legal heirs of the original land and house owners and registered their names on the basis of forged documents in the revenue

records. It is submitted that the aforesaid entire facts have not been appreciated by the trial court. Moreover, it is further submitted that when the original land and house owners migrated to Pakistan in the year 1971-72, they have never come back and so the accused nos.2 to 5 have got their death certificate by making false affidavit and though the accused are not the legal heirs and on the basis of the forged affidavit, they got entered their names in the revenue records, and thereby committed the offence. It is submitted that this aspect is also not considered by the trial court. It is also submitted that entries of the present respondents accused in the revenue records of land and house were deleted by the order of the Collector, Kutch on 22/10/2014 and therefore, the order of the Collector itself reveals that the respondents are not legal heirs of the land and house of the original owners. It is further submitted that as the District Collector passed the order dated 22/10/2014 was taken in suo-motu revision and it was found that the revenue entry of the disputed land and house were illegal, wrong, against the record of rights and accordingly deleted the mutation entries and so it can be made out that the accused in order to get their names entered in the revenue record have created forged and fabricated documents, so the charges levelled against the accused are proved, but this aspect is also not considered by the trial court. The trial court has not appreciated the evidence which was adduced by the complainant, therefore, acquittal of the trial court is mainly on technical ground, contrary to evidence on record and as

such, it is prayed to admit and allow the appeal.

4. 7. Before advertng to the facts of the case, it would be worthwhile to refer to the scope in Acquittal Appeals. It is well settled by is catena of decisions that an appellate Court has full Power to review, re-appreciate and consider the Evidence upon which the order of Acquittal is founded. However, the Appellate Court must bear in mind that in case of Acquittal, there is prejudice 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 reaffirmed and strengthened by the trial Court.

5. We have gone through the judgement and order of the trial court. It appears from the record that the complainant has examined four witnesses in support of its case and has produced 19 documentary evidences.

6. Considering the evidence on record adduced by the complainant, the complainant has reiterated the facts of the complaint. The other witnesses who have been examined by the complainant PW No.2, 3 and 4 vide Ex.Nos.46, 47 and 48 have deposed that original owners of the land and house migrated to Pakistan in the year 1971-72 and they have not

been heard or seen since then. The house of the migrated persons is in dilapidated condition. It is also mentioned by all the witnesses that they are unknown to the fact that in whose name the house and land are resting. The accused have executed documents of the land but when they have executed and how they have executed is not known to any of the witnesses. Considering the deposition of the witnesses, no iota of evidence comes on record by the complainant regarding any kind of fraud, cheating, etc. alleged to have been committed by the accused. They are totally ignorant of the fact that how the revenue records are holding the names of the accused and since when. As per the allegation of the complainant, he has alleged that after the original owners of the land and house left for Pakistan, the accused have created false, fabricated and concocted affidavits and have entered their names in the revenue records by committing offence of cheating and forgery. It is also the case of the complainant that the original land owners of the land and house have migrated to Pakistan in the year 1971-72 as case was registered against them before the Lakhpat Police Station vide CR No.21 of 1976. This aspect is not clarified by the complainant, as if the accused had migrated in the year 1971-72, there is no question of filing complaint against them in the year 1976 and even the original continued to have migrated is also not proved. So far as aliveness of both the original owners in Pakistan is concerned, nothing is brought on record by the complainant. The only evidence upon which the

complainant is harping upon is the order of the Collector passed under section 108(6) of the Bombay Land Revenue Code in Suo Motu Case No.23 of 2014 wherein the Collector, Kutch issued notice against the present accused and passed an order of deletion of the entries which were standing in the name of the present accused. However, perusing the order of the Collector, it appears that in the order of the Collector it is not mentioned that on the basis of the false affidavit or forged documents executed by the accused entries are deleted. It is observed that the present accused are not legal heirs of the original owners and they are third parties of the land and accordingly the entries were deleted. The Collector further observed that without obtaining probate, the accused cannot be termed as a legal heirs of the owners. It is rightly been observed by the trial court that the question of ownership or legal heirship by way of obtaining probate in the particular case is a dispute which can be decided by the Civil Court. But the only aspect which is to be seen as per the observation of the trial court is that at the time of entering the names of the accused in the revenue records of the land and house of the original owners, whether the respondents have forged and fabricated affidavit and on the basis of such forged affidavit, their names are entered in the revenue record. Here in this case, the complainant has come with a specific case that the accused have forged and concocted affidavit and grabbed the valuable land and house of the original owners. Perusing the entire record of the case, no bogus panchnama, affidavit

or application filed before the Mamlatdar are produced and only xerox copy of the said documents are produced and no original documents are produced on record by the complainant to prove the allegations made against the respondents accused.

7. For the sake of arguments, if the pedigree Mark 3/3 is believed then also present accused are not alien to the relationship of the original owners, but they are paternal cousins of the original owners.

8. In the entire evidence, if the property has been taken up by the Government as evacuee property, no order of the Government has been produced on record and if the property is resting in the name of the Government as evacuee property, it would have been mentioned in the order of the Government, which is missing in this case. No observations regarding forged affidavit or panchnama has been made out in the order of the Collector.

9. In the entire case, it appears from the record that not a single documentary evidence of revenue record is produced by the complainant.

10. As per the submission of the learned advocate for the appellant, application was given for obtaining copy of the revenue record, but no copy has been supplied. To prove the case, it is the duty of the complainant to prove the case

beyond the doubt by producing oral as well as documentary evidence and even the complainant can call and examine any person from the revenue department as a witness with revenue records of the land in question with respect to entering the name of the respondents accused.

11. It appears from the record that not a single iota of evidence has been produced pertaining to commission of forgery of valuable security or will, forgery is done for the purpose of cheating using the forged document or record as it would or commission of breach of trust by the accused. Any of the ingredient of the aforesaid offence found place in the entire offence, except mere allegation.

12. Considering the overall facts and circumstances of the case, we are of the opinion that there is no error committed by the trial court while appreciating the evidence on record produced by the complainant. The trial court has rightly appreciated the evidence and rightly acquitted the accused.

14. It may be noted that as per the settled legal position, when two views are possible, the judgment and order of acquittal passed by the trial Court should not be interfered with by the Appellate Court unless for the special reasons.

15. It is a cardinal principle of criminal jurisprudence that in an acquittal appeal if other view is possible, then also, the appellate Court cannot substitute its own view by

reversing the acquittal into conviction, unless the findings of the trial Court are perverse, contrary to the material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable. (**Ramesh Babulal Doshi V. State of Gujarat (1996) 9 SCC 225**). In the instant case, the learned advocate for the appellant has not been able to point out to us as to how the findings recorded by the learned trial Court are perverse, contrary to material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable.

16. In the case of **Ram Kumar v. State of Haryana**, reported in **AIR 1995 SC 280**, Supreme Court has held as under:

“The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379, Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal.”

18. Considering the aforesaid facts and circumstances of the case and law laid down by the Hon'ble Supreme Court while considering the scope of appeal under Section 378 of the Code of Criminal Procedure, no case is made out to interfere with the impugned judgment and order of acquittal.

19. In view of the above and for the reasons stated above, present Criminal Appeal deserves to be dismissed and is accordingly dismissed limine at admission stage.

(S.H.VORA, J)

R.H. PARMAR

(RAJENDRA M. SAREEN, J)

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THE HIGH COURT
OF GUJARAT

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