IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

CRIMINAL REVISION APPLICATION (REVN) NO.215 OF 2004

Sharad S/o. Shankarrao Bonde
Aged : 44 Yrs., Occ.: Service
as Assistant Registrar at Amravati
University, Amravati,
R/o. Sanmati Colony, Shegaon
Road, Amravati .... APPLICANT

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Gadge Nagar Police Station,
Amravati.

2. Shri Ashish S/o. Radhesham Sharma,
Aged about 25 yrs.,
R/o. Patwari Colony, Paratwada
(Revision abated against respondent No.2)

3. Shri Vikki @ Vikram Thete,
Aged about 26 Yrs.,
R/o. New Prabhat Colony, Amravati

4. Shri Vilas S/o. Shridharrao Pethe,
Aged about 38 Yrs.,
R/o. Kathora (BK.), Tahsil and
Dist. Amravati.

5. Shri Shirish S/o. Bhaskarrao Mohod,
Aged about 45 Yrs.,
R/o. Khaparde Bagicha, Amravati

6. Shri Ashok S/o. Babarao Deshmukh,
Aged about 45 Yrs.,
R/o. Samata Gruha Nirman Sahkari
Sanstha, Kathora Road, Amravati .... RESPONDENTS

WITH
CRIMINAL APPEAL (APEAL) NO.785 OF 2004

State of Maharashtra,
Through Police Station Officer,
Gadge Nagar Police Station,
Amravati. .... APPELLANT

// VERSUS //

1. Shri Ashish S/o. Radhesham Sharma,
Aged about 25 yrs.,
R/o. Patwari Colony, Paratwada
(Revision abated against respondent No.1)

2. Shri Vikki @ Vikram Thete,
Aged about 26 Yrs.,
R/o. New Prabhat Colony, Amravati

3. Shri Vilas S/o. Shridharrao Pethe,
Aged about 38 Yrs.,
R/o. Kathora (Bk.), Tahsil and
Dist. Amravati.

4. Shri Shirish S/o. Bhaskarrao Mohod,
Aged about 45 Yrs.,
R/o. Khaparde Bagicha, Amravati

5. Shri Ashok S/o. Babarao Deshmukh,
Aged about 45 Yrs.,
R/o. Samata Gruha Nirman Sahkari
Sanstha, Kathora Road, Amravati .... RESPONDENTS

Mr P. R. Agrawal, Advocate for the applicant in Revn No. 215 of 2004
Mr S. A. Ashirgade, APP for the State in Revn No. 215 of 2004 & Apeal No. 785 of 2004

Mr R. Sidharth, Advocate for non-applicant No.3 in Revn No. 215 of 2004 and for non-applicant No. 2 in Apeal No. 785 of 2004
Mr S. V. Sirpurkar, Advocate for non-applicant No. 3 in Apeal No. 785 of 2004
Mr P. S. Patil, Advocate for non-applicant No.4 in Revn No. 215 of 2004
Mr S. B. Gandhe, Advocate for non-applicant Nos. 5 & 6 in Revn No. 215 of 2004 and for non-applicant Nos. 4 & 5 in Apeal No. 785 of 2004

CORAM : G. A. SANAP, J.
DATED : 28th MARCH, 2023

JUDGMENT :

1. The above appeal and criminal revision arise out of the Judgment dated 27.08.2004 passed by the learned Judicial Magistrate First Class, Court No. 3, Amravati. Learned Judicial Magistrate First Class, Amravati by his order dated 27.08.2004 acquitted the accused Nos. 1 to 5 (Respondent Nos. 1 to 5 in the appeal and Respondent Nos. 2 to 6 in the revision application) of the offences punishable under Sections 420, 468, 471, 109 read with Section 34 of the Indian Penal Code.

2. The facts in brief are as follows:

The informant Sharad Bonde, at the relevant time, was working as 'Assistant Superintendent' in Amravati University, Amravati. The informant and the accused No. 3 were acquainted with each other. The informant learnt from the accused that the plot No. 47 belonging to

one member of Samata Gruh Nirman Sahkari Society, Amravati was available for sale. The informant and the accused No. 3, therefore, approached the accused No.1. The accused Nos. 1, 2 and 3 represented to the informant that the original owner of the said plot had sold the said plot to the accused No.1 (now deceased). The accused Nos. 1 to 3 agreed to sell the plot to informant @ of Rs.80/- per Sq.Ft. The informant paid Rs.90,000/- to the accused No.1 in presence of the accused Nos. 2 and 3. They promised to transfer the plot in the name of the informant in the record of society. It is stated that, on 09.09.2000, the accused Nos.1 to 3 brought one unknown person in the office of Society and introduced the said person as Bhalchandra Harihar Sarjoshi, the original owner of the plot. The accused No.4, the president of the society and the accused No. 6, the Secretary of the Society in the Society office confirmed that the person brought by them was Bhalchandra Sarjoshi, the owner of the plot. The transaction of sale was finalized. The informant paid Rs.1,82,000/- to the accused No.1. The accused No.1 executed a document on a stamp paper. The accused Nos. 2 and 3 signed the said document as attesting witnesses. The accused No.1 had taken Rs.48,000/- from the informant as a brokerage charges. On 09.09.2000, the documents such as Sanmati lekh, possession deed and

membership surrender letter were executed. On 12.09.2000, the accused Nos. 4 and 5 accepted Rs.8,311/- towards the transfer charges of the plot in the name of the informant. On 19.10.2000, the plot was transferred and allotted in the name of the informant.

3. It is stated that on 08.06.2001, the informant applied for permission to make the construction on the said plot. At that time, the Society by written letter informed him that the plot belongs to Bhalchandra Sarjoshi and therefore, permission for construction cannot be granted. On receipt of the said letter, on 19.06.2001, the informant made an inquiry and came to know that on the basis of the forged documents he was deceived by the accused persons. He, therefore, lodged the report at police station. The crime bearing No. 348 of 2001 came to be registered against the accused for the above offences. PW-3 conducted the investigation and filed the chargesheet against the accused.

4. Learned JMFC framed the charges against the accused. The accused pleaded not guilty. In order to bring home the guilt against the accused, prosecution examined three witnesses. PW-1 is the informant. PW-2 is the owner of the plot Mr Bhalchandra Sarjoshi. PW-3 is the

investigating Officer. All the accused persons, in support of their defence, examined one defence witness. Learned Magistrate, on appreciation of the evidence, observed that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Therefore, the learned Magistrate acquitted the accused persons.

5. Being aggrieved by the order of acquittal, the State has filed the appeal against the order of the acquittal. The informant being aggrieved by the said order of the acquittal filed the criminal revision application.

6. I have heard the learned Advocates for the accused persons, learned Advocate for the informant and learned Additional Public Prosecutor for the State. Perused the record and proceedings.

7. Learned APP submitted that there is ample oral and documentary evidence to prove the guilt against the accused persons beyond reasonable doubt. Learned APP submitted that the learned Magistrate has not properly appreciated the evidence of the informant and as such, has come to a wrong conclusion. Learned APP submitted

that the admitted documents itself are sufficient to prove the forgery and cheating. Learned APP submitted that learned Magistrate has given unnecessary importance to the conduct of the informant and the failure of the prosecution to find out the said fake person, who had signed the documents in the name of the original owner Mr. Sarjoshi. Learned APP submitted that evidence on record is concrete, cogent and reliable. Learned APP submitted that on the basis of the evidence the delay of two months for lodging the FIR has been properly explained.

8. Learned Advocate for the informant apart from adopting the above submissions of the learned APP submitted that the transaction of transfer was completed in all respect by the accused persons. Learned Advocate submitted that the accused persons knew that the person who executed the transfer documents of the plot was not the real owner of the said plot. Learned Advocate, therefore, submitted that the material on record is sufficient to establish the guilt of the accused beyond reasonable doubt.

9. Learned Advocate for the accused Nos. 4 and 5 submitted that the defence witness examined by the accused has crystallized the

factual position and therefore, the accused Nos. 4 and 5 could not have been prosecuted in this crime. Learned Advocate submitted that there is no iota of material against the accused Nos. 4 and 5.

10. Learned Advocate for the accused No. 2 submitted that he was not party to the transaction between the accused No.1 and the original owner with regard to the transfer of the plot in the name of the accused No.1. Learned Advocate submitted that the accused No.2 introduced the informant to the accused No.1, when the informant expressed his desire to purchase the plot. Learned Advocate submitted that the accused No. 2 was, therefore, not knowing any transaction between the accused No. 1 and the original owner.

11. Learned Advocate for the accused No. 3 submitted that he was not party to any agreement or talk between the remaining accused and the informant. He was present in the office of society when the plot was transferred in the record of the society in the name of the informant.

12. Learned Advocates for the parties apart from the above submissions, made a common submission on facts and on law. Learned

Advocates submitted that the learned Magistrate has recorded a concrete finding that evidence is not sufficient to prove the guilt against the accused persons. Learned Advocates submitted that the acquittal of the accused has further reinforced the presumption of innocence of the accused. Learned Advocates submitted that the judgment of the acquittal cannot be reversed on the ground that the view sought to be propounded by the prosecution is possible on the basis of the evidence on record. In order to substantiate this submission reliance has been placed on the decision in the case of ***Ravi Sharma .v/s. State (Government of NCT of Delhi) and another***[1]**.** Learned Advocates further submitted that the conduct of the informant creates a doubt about his own involvement in this crime. Learned Advocates submitted that the evidence on record is sufficient to create a doubt about the case of prosecution.

13. In order to appreciate the rival submissions, I have gone through the record and proceedings. At the outset, it would be necessary to consider the scope of Section 378 of the Code of Criminal Procedure while deciding an appeal against acquittal. The Hon'ble Apex Court in the case of ***Ravi Shrama (cited supra)*** has considered this position. The Hon'ble Apex Court has considered number of earlier judgments of the

1 AIR 2022 SC 4810

Hon'ble Apex Court. It would, therefore, be profitable to reproduce para Nos. 8 and 9 of this judgment:

> *"8. Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.') while deciding an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant portion of a recent judgment of this Court in Jafarudheen and Others v. State of Kerala (2022 SCC Online SC 495); (AIROnline 2022 SC 588) as follows:*
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> *25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.*
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> *9. This Court in the aforesaid judgment has noted the following decision while laying down the law:*
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> *Precedents:*
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> *• Mohan alias Srinivas alias Seena alias Tailor Seena v. State of Karnataka, [2021 SCC OnLine SC 1233]: [AIR OnLine 2021 SC 1184] as hereunder:*
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> *"20. Section 378 CrPC enables the State to prefer an appeal against an order of acquittal. Section 384 CrPC speaks of the powers that can be exercised by the Appellate Court. When the trial court renders its decision by acquitting the accused, presumption of innocence gathers strength before the Appellate Court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. Certainly, the Court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person*

while they depose. The Appellate Court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it, but is duty bound to satisfy itself whether the decision of the trial court is both possible and plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. Article 21 of the Constitution of India also aids the accused after acquittal in a certain way, though not absolute. Suffice it is to state that the Appellate Court shall remind itself of the role required to play, while dealing with a case of an acquittal.

21. Every case has its own journey towards the truth and it is the Court's role undertake. Truth has to be found on the basis of evidence available before it. There is no room for subjectivity, nor the nature of offence affects its performance. We have a hierarchy of courts in dealing with cases. An Appellate Court shall not expect the trial court to act in a particular way depending upon the sensitivity of the case. Rather it should be appreciated if a trial court decides a case on its own merit despite its sensitivity.

22. At times, courts do have their constraints. We find, different decisions being made by different courts, namely, trial court on the one hand and the Appellate Courts on the other. If such decisions are made due to institutional constraints, they do not augur well. The district judiciary is expected to be the foundational court, and therefore, should have the freedom of mind to decide a case on its own merit or else it might become a stereotyped one rendering conviction on a moral platform. Indictment and condemnation over a decision rendered, on considering all the materials placed before it, should be avoided. The Appellate Court is expected to maintain a degree of caution before making any remark.

23. This court, time and again has laid down the law on the scope of inquiry by an Appellate court while dealing with an appeal against acquittal under Section 378 CrPC. We do not wish to multiply the aforesaid principle except placing reliance on a recent decision of this court in Anwar Ali vs. State of Himachal Pradesh, (2020) 10 SCC 166: (AIR 2020 SC 4519);

14.2. When can the findings of fact recorded by a court be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under: [Babu v. State of Kerala, (2010) 9 SCC 189: (2010 AIR SCW 5105)]:

"20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn. [(1984) 4 SCC 635: (AIR 1984 SC 1805)], Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [1992 Supp (2) SCC 312]: (AIROnline 1989 SC 224), Triveni Rubber & Plastics v. CCE [1994 Supp (3) SCC 665]: (AIR 1994 SC 1341), Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501; (AIR 2001 SC 386)], Aruvelu v. State, [(2009) 10 SCC 206: (2009) AIR SCW 6593)] and Gamini Bala Koteswara Rao v. State of A.P. [(2009) 10 SCC 636: (AIR 2010 SC 589)]." It is further observed, after following the decision of this Court in Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10: AIR 1999 SC 677)], that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse, and the findings would not be interfered with.

14.3. In the recent decision of Vijay Mohan Singh v. State of Karnataka, [(2019) 5 SCC 436: (AIR 2019 SC2418)], this Court again had an occasion to consider the scope of Section 378 CrPC and the interference by the High Court [State of Karnataka v. Vijay Mohan Singh, 2013 SCC OnLine Kar 10732] : (AIROnline 2013 Kar 2) in an appeal against acquittal. This Court considered a catena of decisions of this Court right from 1952 onwards. In para 31, it is observed and held as under:

"31. An identical question came to be considered before this Court in Umedbhai Jadavbhai v. State of Gujarat, [(1978) 1 SCC 228]: (AIR 1978 SC 424]. In the case before this Court, the High

Court interfered with the order of acquittal passed by the learned trial court on reappreciation of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under:

'10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case.'

31.1. In Sambasivan v. State of Kerala, [(1998) 5 SCC 412: (AIR 1998 SC 2107)], the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on reappreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court. While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under:

'8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in Doshi case [Ramesh Babulal Doshi v. State of Gujrat, (1996) 9 SCC 225: (AIR 1996 SC 2035)] viz. first recording its conclusion on the question whether the approach of the trial court in dealing with

the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well-considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal. We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case.'

31.2. In K. Ramakrishnan Unnithan v. State of Kerala, [(1999) 3 SCC 309]:(AIR 1999 SC 1428), after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to reappreciate the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined

that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.

31.3. In Atley v. State of U.P., [AIR 1955 SC 807], in para 5, this Court observed and held as under:

'5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 CrPC came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well- established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.

If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this

connection the very cases cited at the Bar, namely, Surajpal Singh v. State [1951 SCC 1207]: (AIR 1952 SC 52); Wilayat Khan v. State of U.P. [1951 SCC 898]:(AIR 1953 SC 122). In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.'

31.4. In K. Gopal Reddy v. State of A.P., [(1979) 1 SCC 355: (AIR 1979 SC 387)], this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule."

• N. Vijaykumar v. State of T.N., [(2021) 3 SCC 687]: (AIR 2021 SC 766) as hereunder:—

"20. Mainly it is contended by Shri Nagamuthu, learned Senior Counsel appearing for the appellant that the view taken by the trial court is a "possible view", having regard to the evidence on record. It is submitted that the trial court has recorded cogent and valid reasons in support of its findings for acquittal. Under Section 378 CrPC, no differentiation is made between an appeal against acquittal and the appeal against conviction. By considering the long line of earlier cases this Court in the judgment in Chandrappa v. State of Karnataka, [(2007) 4 SCC 415: (2007 AIR SCW 1850)] has laid down the general principles regarding the powers of the appellate Court while dealing with an appeal against an order of acquittal. Para 42 of the judgment which is relevant reads as under: (SCC p. 432)

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate 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."

21. Further in the judgment in Murugesan v. State, [(2012) 10 SCC 383: (AIR 2013 SC 274)] relied on by the learned Senior Counsel for the appellant, this Court has considered the powers of the High Court in an appeal against acquittal recorded by the trial court. In the said judgment, it is categorically held by this Court that only in cases where conclusion recorded by the trial court is not a possible view, then only the High Court can interfere and reverse the acquittal to that of conviction. In the said judgment, distinction from that of "possible view" to "erroneous view" or "wrong view" is explained. In clear terms, this

Court has held that if the view taken by the trial court is a "possible view", the High Court not to reverse the acquittal to that of the conviction.

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23. Further, in Hakeem Khan v. State of M.P., [(2017) 5 SCC 719: (AIR 2017 SC 1723)] this Court has considered the powers of the appellate court for interference in cases where acquittal is recorded by the trial court. In the said judgment it is held that if the "possible view" of the trial court is not agreeable for the High Court, even then such "possible view" recorded by the trial court cannot be interdicted. It is further held that so long as the view of the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of the trial court cannot be interdicted and the High Court cannot supplant over the view of the trial court. Para 9 of the judgment reads as under; (SCC pp.722-23)

"9. Having heard the learned counsel for the parties, we are of the view that the trial court's judgment is more than just a possible view for arriving at the conclusion of acquittal, and that it would not be safe to convict seventeen persons accused of the crime of murder i.e. under Section 302 read with Section 149 of the Penal Code. The most important reason of the trial court, as has been stated above, was that, given the time of 6.30 p.m. to 7.00 p.m. of a winter evening, it would be dark, and, therefore, identification of seventeen persons would be extremely difficult. This reason, coupled with the fact that the only independent witness turned hostile, and two other eyewitnesses who were independent were not examined, would certainly create a large hole in the prosecution story. Apart from this, the very fact that there were injuries on three of the accused party, two of them being deep injuries in the skull, would lead to the conclusion that nothing was premeditated and there was, in all probability, a scuffle that led to injuries on both sides. While the learned counsel for the respondent may be right in stating that the trial court went overboard in stating that the complainant party was the aggressor, but the trial court's ultimate conclusion leading to an acquittal is certainly a possible view on the facts of this case.

> *This is coupled with the fact that the presence of the kingpin Sarpanch is itself doubtful in view of the fact that he attended the Court at some distance and arrived by bus after the incident took place."*
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> *24. By applying the abovesaid principles and the evidence on record in the case on hand, we are of the considered view that having regard to material contradictions which we have already noticed above and also as referred to in the trial court judgment, it can be said that acquittal is a "possible view". By applying the ratio as laid down by this Court in the judgments which are stated supra, even assuming another view is possible, same is no ground to interfere with the judgment of acquittal and to convict the appellant for the offence alleged. From the evidence, it is clear that when the Inspecting Officer and other witnesses who are examined on behalf of the prosecution, went to the office of the appellant-accused, the appellant was not there in the office and office was open and people were moving out and in from the office of the appellant. It is also clear from the evidence of PWs 3, 5 and 11 that the currency and cellphone were taken out from the drawer of the table by the appellant at their instance. There is also no reason, when the tainted notes and the cellphone were given to the appellant at 5.45 p.m. no recordings were made and the appellant was not tested by PW 11 till 7.00 p.m."*

14. The issue involved in this proceeding is, therefore, required to be addressed in the backdrop of law laid down, as above. Learned Magistrate on minute scrutiny of the evidence found that it was not sufficient to prove the offence of cheating and forgery. On going through the evidence on record and also the reasons recorded by the learned Magistrate in support of his finding, I am of the view that no case has been made out to reverse the order of acquittal of the accused. It is

further pertinent to note that the accused No.1 is dead. At the most, it could be said that he was the initiator of the transaction. The accused No.1 had in his possession the document of transfer of the plot by original owner. On the basis of said document he proposed to sell the said plot to the willing purchaser. The accused Nos. 2 to 5, as such, were not directly concerned with the transfer of the plot to the informant. It has come on record in the evidence of the informant that the entire consideration was received by the accused No.1. It is not his case that the accused Nos. 2 to 5 received any consideration or a part of consideration of the sale. It is further pertinent to note that apart from this criminal prosecution, the informant had filed the civil suit for recovery of Rs.4,30,000/- from the accused Nos. 1 to 5. During the pendency of the said suit the accused No.1 died. The informant who was plaintiff in the said suit did not take steps to bring on record the legal heirs of the accused No.1. The suit was, therefore, abated against the accused No.1. The suit was partly decreed. The informant's claim for recovery of Rs.8,311/- was accepted against the society. The claim against the accused Nos. 2 to 5 was not granted. The appeal filed against this judgment and decree of a civil Court came to be dismissed on 31.08.2018. It, therefore, goes without saying that apart from the

criminal prosecution, the informant took resort to the civil litigation for recovery of his amount. The accused Nos. 2 to 5 were not found liable in any manner to pay the money claimed in the suit by the informant. In my view, this would be the strong circumstance in favour of the accused Nos. 2 to 5.

15. In this case, the original owner of the plot has been examined. The original owner of the plot in his evidence has stated that the documents of the transfer of the plot do not bear his signature. It is the case of the informant that the accused Nos. 1, 2 and 3 had brought one person in the age group of 60 to 62 years and introduced him as owner Mr Bhalchandra Sarjoshi. It is his further case that the accused Nos. 4 and 5 confirmed that the person brought by the accused Nos. 1 to 3 was Mr Bhalchandra Sarjoshi. It is his case that in fact he was not Mr Sarjoshi but a fake person. Learned Magistrate on this point has observed that the said fake person was not traced out. Similarly, the signatures on the documents were not proved. It is to be noted that if the fake person had executed document and completed the transaction in presence of the informant he was supposed to provide the description of the said person. The investigating officer during the course of

investigation could have easily traced out the said fake person. It is to be noted that this aspect creates a doubt about the case of the prosecution and conduct of the informant. The informant is well educated person. The informant without making the inquiry agreed to purchase the plot. It was a transfer of immovable property. The transfer of immovable property could not have been made without the registration of sale deed. It is the case of the informant that he acted on the say of the accused Nos. 1 to 3 and therefore, paid the amount. In the fact situation, therefore, the signatures on the documents have not been proved. The said fake person was not traced out. In my view, this is a vital lacuna in the case of the prosecution.

16. The informant has stated that before transaction he came to know that the plot belonged to the society. It is to be noted that, therefore, the informant was supposed to approach the society and not the accused No.1. According to him, the accused No. 1, executed 'Isar Chitti' in his favour at the house of his elder brother. It is his case that when he came to know that he was deceived, he lodged report. However, the fact remains that he lodged report after two months from the date of his knowledge. The defence witness has fortified the defence of the

accused Nos. 4 and 5. In his evidence he has stated that he issued a bhukhand transfer receipt for Rs.8,311/-. He has stated that on 12.09.2000, the informant alone had come to his office and informed that Mr Sarjoshi will come to his office for execution of the consent deed. He has stated that for the purpose of completion of transaction he had verified the original specimen signature of bhukhand dharak namely Mr Sarjoshi and found that the signatures on documents were not matching with the signature of Mr Sarjoshi. On his inquiry, he was told that the signature on the consent letter of the owner was of the son of Mr Sarjoshi, who was a bank employee. He has stated that thereafter he obtained the signature of the so called Mr Sarjoshi in the register at Exh.53.

17. On consideration of the evidence on record, I am of the view that the evidence is not sufficient to prove the guilt against the accused Nos. 2 to 5. The prosecution has abated against the accused No.1. The accused Nos. 2 to 5 have not executed any document. There is no report of the handwriting expert with regard to the author or the signatories of the documents. The investigation on that aspect is defective. In such circumstances, reasonable doubt has been created

about the role of the informant. In the facts and circumstances, the possibility of the informant making the signature of Mr Bhalchandra Sarjoshi cannot be ruled out. On minute perusal of the evidence, I am satisfied that the learned Magistrate has not committed any mistake or illegality. It is further pertinent to note that at the most on the basis of this evidence it can be said that two views are possible. In my view, if this aspect is examined in *juxtaposition* with the law laid down above I am of the view that it would not be proper to reverse the judgment of acquittal. Accordingly, I do not see any substance in the appeal and revision.

18. The criminal appeal and revision application stand dismissed. No order as to costs.

(G. A. SANAP, J.)

Namrata