2025:DHC:675

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 06.12.2024
Pronounced on: 30.01.2025

\+ **CRL.A. 194/2009**

D.D.A. .....Appellant

Through: Mr. Tushar Sannu, Mr. Nikhil Nanda, Mr.Sunil Malhotra, Advocates

versus

M/S K.P.TRADING CO. & ORS. .....Respondents

Through: Mr.Akshit Dua and Mr.Yashasvika, Advocates

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been filed against the order/judgement dated 31.03.2006 passed by MM, New Delhi, in Case No. 57/98 registered under Section 14 r/w Section 29(2) of the Delhi Development Act (hereinafter 'DD Act'), whereby the Trial Court acquitted Respondent No. 2 and 3 for the said offences.

This Court observes that during the pendency of the present appeal, the Respondent No. 3 namely *Sangeeta Sethi* has passed away on 03.05.2024. In this regard, an affidavit along with a death certificate have been placed on record. Accordingly, the proceedings against the said respondent stand abated.

2. The facts, pithily put, are that on 05.06.1997, the accused persons

were found using the premises in question i.e. 138 Raja Garden, Delhi for running a trade store for cosmetics under the name "K.P. Trading Co.", contrary to the permitted purpose i.e., residential thereby leading to initiation of prosecution resulting in filing of complaint/*challan* under Section 14 r/w Section 29(2) of DD Act.

3. The prosecution examined a total of 2 witnesses to prove its case. CW-2 was a formal witness who proved the constitution of the accused firm namely 'K.P. Trading Co.'. CW-1, on the other hand, was the joint engineer/ inspector of DDA who had inspected the firm's premises.

The respondents in their statement under Section 313 CrPC pleaded not guilty and claimed false implication.

4. Learned counsel for the appellant states that the constitution of the firm clearly indicate that Respondents Nos. 2 and 3 were the partners in the said firm, thereby making them equally liable with the main accused for having committed the offence.

5. Learned counsel for the respondent while opposing defended the impugned judgment and emphasized that the respondents were rightly acquitted in light of the material that came on record. It is argued that the concerned agency i.e. DDA failed to bring on record any substantive material that would lead to an inference of Respondent Nos. 2 and 3 being in charge and responsible for day to day affairs of the firm. Further, the mere mention of their names in the constitution of the firm is not sufficient to bring them within the rigours of section 14 r/w section 29(2) of the DD Act.

6. I have heard the learned counsels for the parties as well as perused the material placed on record.

7. The Trial Court, while referring to the testimony of CW1, recorded that the witness deposed that on the day of the inspection i.e., on 05.06.1997, he met four persons at the spot, however failed to name any of them. The witness further deposed as to meeting Akash Sethi, the main accused at the site. In his cross-examination, the witness admitted that Respondent Nos 2 and 3 were not found at the time of the inspection.

Notably, in trial relating to subsequent prosecution initiated against the accused persons, the same witness deposed as CW1. Pertinently, he deposed that except his inspection visit on 15.06.2009, he had not visited the subject premises any time earlier or later. This aspect of the testimony is directly in teeth of his earlier testimony tendered in the prosecution of the 1st case where he had stated to have visited the subject premises on 05.07.2007.

8. With respect to the question as to whether the Respondent Nos 2 and 3 could be deemed to have played an active role in managing the day to day affairs of the partnership firm, this Court deems it apposite to refer to the decision of the Delhi High Court in DDA v. M/s Umang Motors in **CRL.L.P. 209/2006** dated 22.07.2008 wherein the Court has observed that:-

> "*To hold a partner of a firm vicariously liable u/S-32, the prosecution has to prove that at the time of commission of offence the partner was in charge of and was responsible to the firm for the conduct of business of the firm, or that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of the partner. Merely establishing that a person was a partner in a partnership firm is not sufficient to attract S-32.*
> *Xxx*
> *In Adarsh Marwah & Ors. v. Nehar Ranjan Bhattacharya & Anr, **41(1990) DLT167** this Court had held that no vicarious liability in criminal law could be imputed unless the partner is shown to be responsible for the business of the partnership firm. The principle enunciated is that the prosecution must*

plead that partner/Director of a firm/company to be prosecuted was in charge of and responsible for the conduct of the business of the company"

9. This Court notes that in the present facts and circumstances of the case, except relying the constitution of the partnership firm no other material has been placed on record to show that the said respondents played any active role or were responsible for managing the day to day affairs of the firm. The Court also takes note of the cross-examination of CW1 where the witness concedes that *Sangeeta Sethi and Poonam Kumari* i.e. the respondents were not found to be present at the subject premises on the day of the inspection.

10. Positive reference is made by this Court to the decisions of the Supreme Court in S.M.S Pharmaceuticals Ltd. v. Neeta Bhalla, reported as **(2005) 8 SCC 89** and Susela Padmawathy Amma v. Bharti Airtel Ltd., reported as **2024 SCC OnLine SC 311** where it has been categorically stated that the mere nomenclature or mention of an individual as a director, in the absence of any proof showing him to be in charge of day-to-day affairs of the company cannot itself bring him/her into the fold of Section 138 by assistance of Section 141 NI Act, the latter of which relates to vicarious liability of a Director.

11. At this juncture, it is also deemed apposite to refer to the decision of the Supreme Court in Anwar Ali & Anr. v. State of H.P., reported as **(2020) 10 SCC 166**, wherein it has been categorically held that the principles of double presumption of innocence and benefit of doubt should ordinarily operate in favour of the accused in an appeal to an acquittal. The relevant portions are produced hereinunder:

*"**14.1.** In Babu [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] , this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 CrPC. In paras 12 to 19, it is observed and held as under: (SCC pp. 196-99)*

"…

13. In Sheo Swarup v. King Emperor [Sheo Swarup v. King Emperor, 1934 SCC OnLine PC 42 : (1933-34) 61 IA 398 : AIR 1934 PC 227 (2)] , the Privy Council observed as under: (SCC Online PC: IA p. 404)

'… the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.'

14. The aforesaid principle of law has consistently been followed by this Court. (See Tulsiram Kanu v. State [Tulsiram Kanu v. State, 1951 SCC 92 : AIR 1954 SC 1] , Balbir Singh v. State of Punjab [Balbir Singh v. State of Punjab, AIR 1957 SC 216 : 1957 Cri LJ 481] , M.G. Agarwal v. State of Maharashtra [M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200 : (1963) 1 Cri LJ 235] , Khedu Mohton v. State of Bihar [Khedu Mohtonv. State of Bihar, (1970) 2 SCC 450 : 1970 SCC (Cri) 479] , Sambasivan v. State of Kerala [Sambasivan v. State of Kerala, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320] , Bhagwan Singh v. State of M.P. [Bhagwan Singh v. State of M.P., (2002) 4 SCC 85 : 2002 SCC (Cri) 736] and State of Goa v. Sanjay Thakran [State of Goa v. Sanjay Thakran, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] .)

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)…

(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.'

16. In Ghurey Lal v. State of U.P. [Ghurey Lal v. State of U.P., (2008) 10 SCC 450 : (2009) 1 SCC (Cri) 60] , this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In State of Rajasthan v. Naresh [State of Rajasthan v. Naresh, (2009) 9 SCC 368 : (2009) 3 SCC (Cri) 1069] , the Court again examined the earlier judgments of this Court and laid down that: (SCC p. 374, para 20)

> *'20. ... An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused.'*

xxx

***17.** Even in G. Parshwanath [G. Parshwanath v. State of Karnataka, (2010) 8 SCC 593 : (2010) 3 SCC (Cri) 1027] , this Court has in paras 23 and 24 observed as under: (SCC pp. 602-03)*

> *"23**. <u>In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies</u>**. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.*
>
> *24. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even*

though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court." (emphasis supplied) "

12. In light of the aforesaid and in the absence of any substantive material placed on record to prove the prosecution case, this Court concurs with the decision rendered by the Trial Court that the allegations of the Respondent Nos 2 and 3 playing an active role in the daily functioning of "K.P Trading Co." have not been proved beyond reasonable doubt.

13. Finding no merit, the appeal is accordingly dismissed.

14. Let a copy of this order be communicated to the concerned Trial Court.

MANOJ KUMAR OHRI
(JUDGE)

JANUARY 30, 2025/*js*