

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

HEARD ON THE 30th OF AUGUST, 2022

ORDER PASSED ON THE 08th OF SEPTEMBER, 2022

MISC. CRIMINAL CASE No. 61045 of 2021

Between:-

MAHESH KHANDELWAL S/O RAMKISHAN KHANDELWAL,
AGED ABOUT 62 YEARS, OCCUPATION: BUSINESS 921,
CHHOTA BAZAAR, MHOW, DISTRICT-INDORE (MADHYA
PRADESH)

.....PETITIONER

*(SHRI ASHOK KUMAR SETHI, LEARNED SENIOR COUNSEL
WITH SHRI HARISH JOSHI, LEARNED COUNSEL FOR THE
PETITIONER)*

AND

- THE STATE OF MADHYA PRADESH THRU. RESERVE
1. CENTRE KISHANGANJ, DR. AMBEDKAR NAGAR, INDORE
(MADHYA PRADESH)
 2. DEVISINGH ANJANA S/O KASHIRAM ANJANA, AGED

**ABOUT 52 YEARS, OCCUPATION: WATCHMAN
VEDNAGAR, MANGAL APARTMENT NANAKHEDA UJJAIN
(MADHYA PRADESH)**

VIRENDRA YADAV S/O SUBHASH CHANDRA YADAV, AGED

**3. ABOUT 44 YEARS, OCCUPATION: SERVICE KISHANGANJ,
MHOW, DISTRICT-INDORE (MADHYA PRADESH)**

**RAKESH JATAV S/O BABULAL JATAV, AGED ABOUT 48
YEARS, OCCUPATION: CONTRACTOR BORKHEDI, P.S.**

**4. KISHANGANJ, MHOW DISTRICT-INDORE (MADHYA
PRADESH)**

RAJESH YADAV S/O SUNDERLAL YADAV, AGED ABOUT 55

**5. YEARS, OCCUPATION: MILK BUSINESS GUJARKHEDA,
P.S. MHOW, DISTRICT-INDORE (MADHYA PRADESH)**

.....RESPONDENTS

**(SHRI MUKESH KUMAWAT, LEARNED COUNSEL FOR THE
RESPONDENT NO.1/STATE)**

*This application comes on for admission this day, JUSTICE
AMAR NATH (KESHARWANI) passed the following:*

ORDER

Heard on the application for the grant of special leave to appeal under Section 378 (4) of the Code of Criminal Procedure, 1973.

(02) This application has been filed to grant special leave to appeal against the judgment of acquittal dated 29.10.2021 passed by 2nd Additional Sessions Judge, Dr. Ambedkar Nagar, District-Indore (M.P) in Sessions

Trial No.43/2017, whereby the respondent Nos.2 to 5/accused persons have been acquitted.

(03) Brief facts of the case as per the petition, the appellant and his wife Savita Khandelwal purchased the land situated at village Borkhedi, Tehsil-Mhow bearing survey nos. 65/2, 66/2/1, total area 0.518 hectares from respondent No.2 on 10.05.2010, and their names are entered in the revenue records for the said land. The land bearing survey Nos.97/1/1, 169/2/1, 170/2/1, and 250/4/1 total area of 0.554 hectares was purchased by Mrs. Savita Khandelwal from respondent No.2 by giving consideration amount of Rs.32 Lakhs on 20.11.2013. On the same day, one Kabuliyat agreement was made between the parties to the transaction. A power of attorney was made in favor of the appellant by respondent No.2 which was registered in the Tehsil office thereafter. On 26.02.2014, using the registered power of attorney the remaining land was registered in the name of Mrs. Savita Khandelwal in the sub-registrar office. Thereafter, an application for mutation of land in the name of Mrs. Savita Khandelwal was made to the Tehsildar on 05.04.2014. The hearing upon this application was fixed for 26.04.2014 but objections were filed to this mutation application by Respondent No.2 and the Respondent No. 3 to 5 also objected to the mutation on the ground that they were also sold the land bearing survey No.250/4/1 (hereinafter referred to as “disputed land”) area 0.335 hectare by respondent No.2.

(04) It is stated that respondent No.2 got a new Rin-pustika made from the Tehsil office on the pretext that the original had gone missing and by using this new Rin-pustika respondent No.2 sold the disputed land to respondents No. 3 to 5. The complainant made a written complaint against

respondents No. 2 to 5 for which FIR (Ex.P-32) Crime No.433/14 under Sections 420, 467, 468 of IPC was registered on 13.08.2014 at Police station, Kishanganj against respondents Nos.2 to 5. Thereafter, an investigation was conducted and statements of witnesses were taken.

(05) After completion of the investigation, the charge sheet was filed under Sections 420, 467, 468, and 471 of IPC. After that, the case was committed to the sessions court and then the same was made over to the 3rd Additional Sessions Judge, Mhow, District-Indore. The trial court framed the charges against appellants under Sections 420, 467, 468, and 471 of IPC, who denied the charges and pleaded for trial. After evaluating the evidence that came on record the trial court acquitted the respondent Nos.2 to 5 by the impugned judgment dated 29.10.2021.

(06) Being aggrieved by the impugned judgment and order dated 29.10.2021, the applicant has filed this application for a grant of special leave to appeal.

(07) Learned counsel for the petitioner submits that the impugned judgment of the trial court is illegal, perverse, bad in law, and totally against the principles of natural justice. The learned trial court has erred in interpreting Sections 467, 468, and 471 of IPC in proper perspective, and therefore, the findings recorded by the learned trial court are illegal, perverse, and bad in law. Learned trial court has failed in appreciating the evidence in the right perspective and hence, the order of acquittal is liable to be set aside and, hence, prays to grant leave to the appellant in the interest of justice against the impugned judgment of acquittal dated 29.10.2021 passed by learned Additional Sessions Judge, Dr. Ambedkar Nagar, District-Indore in Session Trial No.43/2017.

(08) Learned Government Advocate for the respondent/State submits that on behalf of the State, no appeal has been filed or has been proposed against the impugned judgment.

(09) We have heard and considered the arguments advanced by the learned senior counsel and gone through the impugned judgment and perused the record of the trial court.

(10) Agreement of sale of the property was not executed between the complainant/petitioner Mahesh Khandelwal and Respondent No.1 Devi Singh as admitted by petitioner/ Complainant Mahesh(PW-1) in his cross-examination para-6, he has also admitted in the same para that his name was not mentioned in ExP-5(Acknowledgment of oral Agreement). Power of attorney(ExP-4) and acknowledgment of oral agreement (Exp.5) are said to have been executed on the same day 20/11/2013 but in both the documents, contradictory facts are mentioned, as in power of attorney(ExP-4) it is mentioned that it is revocable and is for a limited period of 1 year and without consideration and possession, whereas in acknowledgment of oral agreement (ExP-5), it is mentioned that Rs.32 lakhs were paid in cash and possession was delivered to purchaser-Savita(wife of petitioner) and it is also mentioned that power of attorney is irrevocable.

(11) The reason given for non-execution of the sale deed forthwith on the date of execution of the "acknowledgment of oral agreement" (ExP-4) is the non-availability of funds to meet the expenses of registration of sale deed, which is not plausible to accept.

(12) Devi Singh(Respondent No.1) D.W.-4 in his statement before the trial court has denied the facts that he has entered into an oral agreement to sell the land, to the wife of the petitioner, and has executed

acknowledgment of the oral agreement and received the consideration amount.

(13) Moreover, it is not a case that was instituted on the instance of complaint/petitioner before the trial court, but the petitioner has made a written complaint to the concerning Police Station and after completion of the investigation, a “challan” has been filed before the jurisdictional court. It is also pertinent to mention that the petitioner is not the victim but as per the written complaint, the wife of the petitioner is the victim and she has not filed the petition to leave appeal. Therefore, in our opinion, the petitioner has no locus in the case and he is not entitled to prosecute the appeal. It is undisputed in the case that the state has not filed any appeal against the impugned judgment of the trial court.

(14) In the case of **State of Rajasthan Vs. Sohanlal and others, (2004) 5 Supreme Court Cases 573**, the Hon'ble Apex Court has held in para 3 as under:-

"We have carefully considered the submissions of the learned counsel appearing on either side. This Court in JT (2004) 2 SC 172: the State of Orissa v. Dhaniram Luhar, has while reiterating the view expressed in the earlier cases for the past two decades emphasized the necessity, duty and obligation of the High Court to record reasons in disposing of such cases. The hall mark of a judgment/order and exceted of judicial power by a judicial forum is to disclose the reasons for its decision and giving of reasons has been always insisted upon as one of the fundamentals of sound administration justice delivery system, to make known that there had been

proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. The fact that the entertaining of an appeal at the instance of the State against an order of acquittal for an effective consideration of the same on merits is made subject to the preliminary exercise of obtaining of leave to appeal from the High Court, is no reason to consider it as an appeal of any inferior quality or grade, when it has been specifically and statutorily provided for or sufficient to obviate and dispense with the obvious necessity to record reasons. Any judicial power has to be judiciously exercised and the mere fact that discretion is vested with the court/forum to exercise the same either way does not constitute any licence to exercise it at whims or fancies and arbitrarily as used to be conveyed by the well known saying - 'varying according to the chancellors foot. Arbitrariness has been always held to be the anathema of judicial exercise of any power, all the more so when such orders are amenable to challenge further before higher forums. The State does not in pursuing or conducting a criminal case or an appeal espouses any right of its own but really vindicate the cause of society at large, to prevent recurrence as well as punish offences and offenders respectively, in order to preserve orderliness in society and avert anarchy, by upholding rule of law. The provision for seeking leave to appeal is in order to ensure that no frivolous appeals are filed against orders of acquittal, as a matter of course, but that does

not enable the High Court to mechanically refuse to grant leave by mere cryptic or readymade observations, as in this case, (the court does not find any error), with no further on the face of it, indication of any application of mind whatsoever. All the more so when the orders of the High Court are amenable for further challenge before this Court. Such ritualistic observations and summary disposal which has the effect of, at times, and as in this case, foreclosing statutory right of appeal, though a regulated one cannot be said to be a proper and judicial manner disposing of judiciously the claim before courts. The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind. All the more so, when refusal of leave to appeal has the effect of foreclosing once and for all a scope for scrutiny of the judgment of the trial court even at the instance and hands of the First Appellate Court. The need for recording reasons for the conclusion arrived at by the High Court, to refuse to grant leave to appeal, in our view, has nothing to do with the fact that the appeal envisaged under Section 378 Cr.P.C. is conditioned upon the seeking for and obtaining of the leave from the court. **This court has repeatedly laid down that as the First Appellate Court the High Court even while dealing with an appeal against acquittal was also entitled**

and obliged as well to scan through and if need be reappreciate the entire evidence, though while choosing to interfere only the court should find an absolute assurance of the guilt on the basis of evidence on record and not merely because the High Court could take one more possible or a different view only. Except the above, in the matter of the extend and depth of consideration of the appeal is concerned, no distinctions or differences in approach are envisaged in dealing with an appeal as such merely because one was against conviction or the other against an acquittal."

(15) In the case of **Gangabhavani Vs. Rayapati Ventak Reddy, 2013 (Criminal Law Journal) 4618 Supreme Court**, the Hon'ble Apex Court has held as under:-

"6. This Court has persistently emphasised that there are limitations while interfering with an order against acquittal. In exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the acquittal by the lower Court bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

(16) In case of **State of Karnataka Vs. Suvarnamma and another,**

(2015) 1 SCC,323, the Hon'ble Apex Court has held that "in an appeal against the acquittal, if a possible view has been taken, no interference is required, but if the view taken is not legally sustainable, the Court has ample powers to interfere with the order of acquittal".

(17) After going through the impugned judgment and record of the trial court, we are of the opinion, that the trial court has considered the oral and documentary evidence placed before them and considered the legal provisions of law and principles laid down by the Hon'ble Apex Court. With aforesaid discussion and principles laid down by the Hon'ble Apex Court as mentioned above, we are of the opinion that it is not a fit case to grant special leave to appeal under Section 378(4) of C.P.C., thereby the application stands rejected.

(VIVEK RUSIA)

JUDGE

(AMAR NATH (KESHARWANI))

JUDGE

N.R.