

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 2922 of 2008****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

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Approved for Reporting	Yes	No
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M.HABIB ISHAQBHAI BANGA
Versus
KULDIPSINGH JARVELSINGH SAINI & ANR.

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Appearance:
MR RUSHABH R SHAH(5314) for the Appellant(s) No. 1
MR HARSHAD K PATEL(2844) for the Opponent(s)/Respondent(s) No. 1
MS JIRGA JHAVERI ADDITIONAL PUBLIC PROSECUTOR for the
Opponent(s)/Respondent(s) No. 2

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**CORAM: HONOURABLE MR. JUSTICE HEMANT M.
PRACHCHHAK**

Date : 10/06/2026**JUDGMENT**

1. The present appeal is filed by the appellant - original complainant under Section 378(1)(3) of the Criminal Procedure Code, 1973 challenging the impugned judgment and order passed by the Additional Sessions Judge, 4th Fast Track Court, Modasa (hereinafter referred to as "the appellate Court") in Criminal Appeal no. 34 of 2006 whereby, the appellate Court has acquitted the respondent - accused.

2. Short facts of the prosecution case are that the appellant-original complainant had sold one truck to the respondent -

accused. That, the complainant had obtained loan of Rs.3,00,000/- from Modasa Road Transport Corporation and as per the agreement, the said amount and interest were to be paid by the accused herein. That, the complainant-appellant herein had already given possession of the said truck to the accused-respondent. That, the amount of Rs.5,24,786/- was agreed between both the parties and as per the agreement Rs.1,60,786/- cash was paid on the date of agreement and Rs.3,00,000/- with interest would be paid to the Bank by the respondent-accused and for the rest of the amount three installments were fixed and as per the agreement, respondent-accused would give the said amount of installments to the appellant-complainant. That, the said amount was not paid in time. That, the appellant came to know that the respondent-accused had not paid installments to the Bank and was trying to sell the said truck to somebody else, therefore, the appellant sent Notice to the Respondent-accused. Therefore, the appellant filed private complaint for the offences u/s, 406, 420, 114 of the Indian Penal Code (hereinafter referred to as "IPC") against the accused-respondent no. 1. That, the Judicial Magistrate First Class (hereinafter referred to as "JMFC") made inquiry U/s.202 of the Code and ultimately passed an order U/s.204 of the Code and issued process against the accused- respondent no.1 herein.

2.1 The JMFC, Modasa, after hearing both the sides, passed the judgment and order of conviction and sentenced the accused to undergo simple imprisonment for one year and to pay a fine of

Rs.1500/-, in default to undergo further imprisonment for 3 months for the offence u/s 406 IPC and sentenced to suffer simple imprisonment for six months and to pay a fine of Rs.750/-, in default to undergo simple imprisonment for two months for the offence u/s 420 of IPC. The sentences had been ordered to run concurrently.

2.2 The charges against the accused came to be framed by the trial Court for the aforesaid offences. On being explained it to him, the accused has denied having committed any offence. The accused pleaded not guilty to the charges and pleaded for trial and hence, the case was tried by the learned Sessions Judge, Modasa.

3. It appears from the records that to prove the case, the prosecution has examined the following witnesses:-

P.W. No.	Name of Witnesses	Exhibit
1	Mahmadbhai Ishakbhai Banga	3
2	Jitendrakumar Dahiya Lal Bhatiya	5

4. In addition to this, the prosecution has also produced the following documentary evidence:

Sr. No.	Particulars	Exhibit
1	Complaint	1
2	Original Sale Deed	4

5. After closure of the evidence, the statements of the accused under section 313 of the Criminal Procedure Code, 1973 have been recorded wherein he denied of having committed any offence and has stated that he is innocent.

6. After hearing both sides and considering the evidence on records, the learned Judicial Magistrate convicted the accused for the alleged offences. Thereafter, against the order of conviction, the accused has preferred criminal appeal before the appellate Court whereby the appellate Court, after considering the submissions and hearing the respective parties and considering the oral as well as documentary evidence, has acquitted the accused from all the charges levelled against him.

7. Being aggrieved and dissatisfied with the aforesaid judgment and order of acquittal, the appellant has preferred this Appeal.

8. Heard Mr. Rushabh Shah, learned counsel for the appellant, Mr. Harshad Patel, learned counsel for respondent no.1 and Ms. Jirga Jhaveri, learned Additional Public Prosecutor appearing for the respondent no.2 at length.

9. Mr. Shah, learned counsel for the appellant has submitted that the appellate Court has committed serious error of law and facts while reversing the judgment of the JMFC, Modasa whereby

the respondent - accused was ordered to be convicted for the offence punishable under section 406 read with section 420 of the IPC. He has submitted that the appellate Court has committed error while interpreting the documents which are produced before the trial court and has also committed an error while considering the oral as well as documentary evidences produced before the concerned trial court while passing the impugned judgment and order of acquittal against the present respondent - original accused. He has submitted that the respondent - accused has committed an offence of breach of trust as he was in possession of the property i.e. the truck bearing registration number GJ 9V 1046 which was sold to the accused-respondent for consideration of Rs.5,24,786/- and out of that, the respondent - accused has paid Rs.1,60,786/- in cash and the complainant had obtained a loan of Rs.3,00,000 from Modasa Road Transport Corporation and the accused was to pay the Rs.3,00,000/- with interest to the bank and for the rest of the amount, three installments were fixed, however, the accused had failed to pay the amount in time. Over and above the contentions raised in the memo of appeal, learned APP has urged that the present appeal deserves to be allowed and the impugned judgment and order recorded by the appellate Court deserves to be quashed and set aside and the order of conviction and sentence imposed by the trial Court be restored in the interest of justice.

10. On the other hand, Mr. Harshad Patel, learned counsel for

the respondent no.1 has submitted that the appellate Court has rightly passed the impugned judgment and order of acquittal and there is no any illegality and infirmity and therefore no interference is required to be called for while exercising the power under Section 378(1)(3) of the Cr.P.C. He has submitted that there was no direct or indirect evidence against the respondent connecting him with the crime in question as alleged by the complainant and therefore, the appellate Court has rightly disbelieved the case of the complainant and passed the impugned judgment and order of acquittal which is just and legal and there is no perversity or illegality in the impugned judgment and order of acquittal. He has submitted that the appeal being meritless deserves to be dismissed and the judgment and order of acquittal deserves to be confirmed.

11. Considering the submissions made by both the parties and on perusal of the recording and proceedings and the paper book, the offence alleged by the appellant to have been committed by the respondent - accused under section 406 r/w section 420 of the IPC is to be read first. Sections 406 and 420 of IPC are reproduced as under:

"406. Punishment for criminal breach of trust - Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

420. Cheating and dishonestly inducing delivery of property - Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make,

alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

11.1 On perusal of sections 406 and 420 of IPC as referred above and the deposition of the complainant, I am of the opinion that the ingredients of section 406 and 420 of IPC are not satisfied. In fact, an agreement was executed between both the parties and the accused has also admitted the fact that the loan amount was already paid by the accused to the complainant and no amount was due towards Modasa Road Transport Corporation. Even on perusal of the deposition of the complainant, it appears that all these accounts were maintained by his maternal uncle. However, for reasons best known to the prosecution, the maternal uncle of the complainant was not examined. However, on perusal of the complaint, the ingredients of section 406 and 420 of IPC are not satisfied, therefore, under such circumstances, the appellate court has rightly passed the impugned judgment and order in favor of the present respondent - original accused. On perusing the reasoning recorded by the appellate court while dealing with the issue no. 1 in paragraph 4 of the impugned judgment and order of acquittal, the appellate Court has in detail recorded the reasons to reverse the findings recorded by the trial court and therefore, I am of the opinion that the impugned judgment and order is just and proper and is in consonance with the settled principles of law as enunciated by the Hon'ble

Supreme Court.

12. It is well settled by catena of decisions that an Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. However, Appellate Court 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 their innocence is further reinforced, reaffirmed and strengthened by the trial Court.

13. Further, 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. Further, while exercising the powers in appeal against the order of acquittal, the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the Appellate Court has a power to review

the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the Appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether the accused are connected with the commission of the crime with which he is charged.

14. The scope and principles are enunciated by the Hon'ble Apex Court in case of **Chandrappa and others Vs. State of Karnataka** reported in **(2007) 4 SCC 415**, more particularly **paragraph Nos. 42 and 43**, which was subsequently re-affirmed by the Hon'ble Apex Court in **Rajesh Prasad Vs. State of Bihar and another**, reported in **[2022] 3 SCC 471**, wherein, the Hon'ble Apex Court has enunciated the general principles in case of acquittal, more particularly in **paragraph No. 26** the general principles are set out by the Hon'ble Apex Court based upon various decisions of the Hon'ble Apex Court. Then in case of **Babu Sahebagouda Rudragoudar Vs. State of Karnataka, reported in AIR 2024 SC 2252 = (2024) 8 SCC 149**, the Hon'ble Apex Court has dealt with the similar issue, more particularly, in **paragraph Nos. 37 to 40**. Hence, we are in complete agreement with the findings recorded by the trial Court.

15. It is also worthwhile to refer to the recent decision of the Hon'ble Supreme Court in the case of **Ramesh vs. State of**

Karnataka, reported in [2024] 9 SCC 169, wherein the Hon'ble Supreme Court has held and observed in paras-20 and 21 as under:-

"20. At this stage, it would be relevant to refer to the general principles culled out by this Court in Chandrappa and others vs. State of Karnataka , regarding the power of the appellate Court while dealing with an appeal against a judgment of acquittal. The principles read thus:

"42. (1) An appellate court has full power to review, reappraise 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 emphasize 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. In Rajendra Prasad v. State of Bihar, a three-Judge Bench of this Court pointed out that it would be essential for the High Court, in an appeal against acquittal, to clearly indicate firm and weighty grounds from the record for discarding the reasons of the Trial Court in order to be able to reach a contrary conclusion of guilt of the accused. It was further observed that, in an appeal against acquittal, it would not be legally sufficient for the High Court to take a contrary view about the credibility of witnesses and it is absolutely imperative that the High Court convincingly finds it well-nigh impossible for the Trial Court to reject their testimony. This was identified as the quintessence of the jurisprudential aspect of criminal justice. Viewed in this light, the brusque approach of the High Court in dealing with the appeal, resulting in the conviction of Appellant Nos. 1 and 2, reversing the cogent and well-considered judgment of acquittal by the Trial Court giving them the benefit of doubt, cannot be sustained."

16. Considering the entire evidence on record, it clearly appears that there is no credible evidence to connect the present accused with the alleged crime and the evidence on record is not so convincing to prove beyond reasonable doubt that the accused has committed the alleged crime. Therefore, the accused cannot be convicted on the evidence on record.

17. On perusal of the impugned judgment and order, it clearly transpires that the appellate Court has not committed any error of fact and law in appreciating the evidence on record and in acquitting the accused from the charges levelled against him. Even on re-appreciation of the evidence, it clearly transpires that the prosecution has miserably failed to prove the charge levelled against the accused beyond reasonable doubt. Therefore, the impugned judgment and order of the appellate Court is sustainable and the present appeal is liable to be dismissed.

18. In view of the above, the present appeal is devoid of merits and it deserves to be dismissed. Resultantly, it is dismissed. The impugned judgment and order of acquittal passed by the appellate Court is hereby confirmed. Bail bond stands cancelled. Record and proceedings be sent back to the concerned Trial Court forthwith.

(HEMANT M. PRACHCHHAK,J)

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