



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 660 of 2012

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK Sd/-

Approved for Reporting	Yes	No
		✓

HARSHAD NANUBHAI DESAI

Versus

MAFATLAL INDUSTRIES LTD (TEXTILE DIVISION) & ORS.

Appearance:

MR BHARAT T RAO(697) for the Appellant(s) No. 1

VISHWA M SHAH FOR NANAVATI ASSOCIATES(1375) for the

Opponent(s)/Respondent(s) No. 1,2

MS JIRGA JHAVERI ADDL. PUBLIC PROSECUTOR for the

Opponent(s)/Respondent(s) No. 3

CORAM: HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

Date : 18/08/2026

JUDGMENT

1. The complainant - appellant has preferred this appeal under Section 378(4) of the Criminal Procedure Code against the judgment and order dated 06.01.2011 rendered by the learned Judge, Labour Court, Navsari, in Criminal Case No.2 of 2001 below Exh.47. The said case was registered against the present respondent original accused for the offence under Sections 106 and 107 of the B.I.R. Act.

2. The brief facts as they emerge from the record are as under:-



2.1 The complainant filed complaint, alleging that without any application under Section 42(1) of the of BIR Act, from 22.2.2000 to 4.6.2000, the respondent committed breach of the administrative rules of the mill and the complainant and other workers were not allowed to enter into the mill. It is also alleged that the settlement took place under the provisions of Section 2(p) of the Industrial Disputes Act on 6.5.2000 with the so called representative. It is also alleged that thereby the respondent committed offence punishable under Sections 106 and 107 of the B.I.R. Act. It is also alleged that the complainant never made signature on the settlement dated 6.5.2000 and on 5.6.2000, he was present on his duty and he was not permitted to enter into the mill. It is further case of the complainant that the said mill never followed the terms of the settlement between the union to pay the amount on 25th day of every month and therefore, the respondent committed breach of Section 46 of the B.I.R. Act. In the present case, the the process was issued against the respondent and document were produced on record. Plea was recorded and the respondent pleaded not guilty. The complainant was examined at Exhibit 23 and cross-examination was also made.

3. At the conclusion of trial and after appreciating evidence, the learned Judge vide impugned Judgment, acquitted the respondent - accused.

4. Being aggrieved by and dissatisfied with the impugned judgment and order of acquittal dated 06.01.2011 rendered by the learned Judge, Labour Court, in Criminal Case No.2 of



2001, the appellant – original complainant has preferred the present appeal before this Court.

5. Learned advocate Mr. B.T. Rao, appearing for the appellant has submitted that the action of the respondent in not making the payment of amount of “Kharchi” on 25th of every month to the employees of mill Company was continuing wrong and therefore, it can be said that the offence is committed by the respondent. He further submitted that the Labour Court erred in ignoring that under B.I.R. Act, the employees have right to receive an amount of Kharchi as per the long standing and consistent practice in the mill company and merely because the settlement is not produced, it cannot be held that the offence is not proved. He also submitted that the in all 22 employees were not allowed to resume the duties as they had not given the undertaking. He also submitted that that the mill company had stopped its operations from 22.2.2000 to 4.6.2000 and thereafter when the employees came to resume duty, the mill company had asked for an undertaking from the employees which was in violation of standing orders. In view of this position, learned advocate for the appellant submitted that the present appeal is required to be allowed and the respondent accused may be convicted for the alleged offence.

6. On the other hand, Vishwa M. Shah, learned counsel for Nanavati Associates submitted that there is no infirmity in the impugned order. It is submitted that the lower court has rightly appreciated the evidence on record and acquitted the respondent of the charges levelled against him. It is, therefore, submitted that the impugned judgment and order



may not be interfered with and it may be confirmed.

7. Heard learned APP Ms. Jirga Jhaveri appearing for the State.

8. I have heard learned learned advocates for the parties. I have gone through the papers produced in the case. As per the contentions of the complainant that according to the settlement under Section 2(p) of the Act, dated 6.5.2000, the respondent accused put the condition that the complainant had to sign in the undertaking, which was not accepted by the complainant and workmen. Thereafter, the workmen went to resume their duties in mill, but they were prevented. In the cross-examination of the complainant, he himself admitted that there is no proof about such undertaking, which is blank form, having no writing and signature. Therefore, evidence of the complainant is not said to be proved as per Section 73 of the Indian Penal Code. Even there is no evidence of any settlement or undertaking with the complainant and also he has no knowledge about the contract executed by the Majur Mahajan. The contention of the complainant that the accused had not complied with condition of the payment of Kharchi made on 25th of month, is not proved by the complainant by any cogent evidence. Even it is also not proved that the persistently the alleged offence was committed by the respondent accused. Considering the overall evidence i.e. documentary as well as oral, it is not established that the accused had committed alleged offence. Therefore, learned Judge has rightly observed that the complainant could not prove its case beyond reasonable doubt.



9. In a decision of the Apex Court in the case of ***State of Goa V. Sanjay Thakran & Anr. Reported in (2007)3 SCC 75***, the Court has reiterated the powers of the High Court in such cases. In para 16 of the said decision the Court has observed as under:

“16. From the aforesaid decisions, it is apparent that 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 any of the accused is connected with the commission of the crime he is charged with.”

10. Similar principle has been laid down by the Apex Court in the cases of ***State of Uttar Pradesh Vs. Ram Veer Singh & Ors, reported in 2007 AIR SCW 5553*** and in ***Girja Prasad (Dead) by LRs Vs. state of MP, reported in 2007 AIR SCW 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

11. Even in a decision of the Apex Court in the case of ***MOOKKIAH AND ANR. VS. STATE, REP. BY THE INSPECTOR OF POLICE, TAMIL NADU (AIR 2013 SC 321)***, the Apex Court in Para-4 has held as under:



"4. It is not in dispute that the trial Court, on appreciation of oral and documentary evidence led by the prosecution and defence, acquitted the accused in respect of the charges leveled against them. On appeal by the State, the High Court, by impugned order, reversed the said decision and convicted the accused under Section 302 read with Section 34 of IPC and awarded RI for life. Since counsel for the appellants very much emphasized that the High Court has exceeded its jurisdiction in upsetting the order of acquittal into conviction, let us analyze the scope and power of the High Court in an appeal filed against the order of acquittal. This Court in a series of decisions 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 reappraise the entire evidence, though while choosing to interfere only the court should find an absolute assurance of the guilt on the basis of the evidence on record and not merely because the High Court could take one more possible or a different view only. Except the above, where the matter of the extent 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. [Vide State of Rajasthan vs. Sohan Lal and Others, (2004) 5 SCC 573]"

12. It is settled legal position that in an acquittal appeal, the Appellate Court is not required to re-write the Judgment or to give fresh reasonings when the Appellate Court is in agreement with the reasons assigned by the trial Court acquitting the accused. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial Court while acquitting the respondent - accused and adopting the said reasons as well as the reasons aforesaid, in my view, the impugned Judgment is just, legal and proper and requires no interference by this Court at this stage. I do not find any cogent reason to interfere with the impugned decision as it cannot be said to be either perverse or not



borne out from the facts of the case. The appellant has not been able to persuade this Court to take a different view in this matter. Hence, this appeal sans merit and is required to be dismissed.

13. In the result, the Criminal Appeal is dismissed and order dated 06.01.2011 passed by the learned Judge, Labour Court, Navsari, in Criminal Case No.2 of 2001 is hereby confirmed. Bail bonds if any stands cancelled. Record and Proceedings, if any, to be sent back to the concerned trial court forthwith.

SURESH SOLANKI

Sd/-
(HEMANT M. PRACHCHHAK,J)