

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

CrIA (AS) No. 08/2020

Reserved On: 14th of December, 2023
Pronounced On: 29th of December, 2023.

State of Jammu & Kashmir through
Senior Superintendent of Police,
Vigilance Organization, Kashmir,
Srinagar.

... Appellant

Through: -

Mr Younis Hafiz, Assisting Counsel vice
Mr Mohsin-ul-Showkat Qadri, Sr. AAG.

V/S

Ranjit Kaur D/O Sewa Singh
R/O Gole Market, Karan Nagar,
Srinagar.

... Respondent

Through: -

Mr Zameer-ul-Islam, Advocate.

CORAM:

HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE

(JUDGMENT)

01. The Appellant-State (now Union Territory) of Jammu & Kashmir has preferred this acquittal appeal against the Judgment dated 26th of February, 2015 passed by the learned Special Judge, Anti-Corruption, Srinagar (for short 'the trial Court'), in a case titled '**State v. Ranjeet Kour**', arising out of FIR No. 16/2003 registered at Police Station, Vigilance Organization, Kashmir (VOK), whereby the Respondent, as accused, had been acquitted from the charge of the commission of the offences punishable under Section 5 (1) (d) read with 5 (2) of the Prevention of Corruption Act, Samvat 2006 and Section 420 of the Ranbir Penal Code (RPC).

02. The factual background of the case is that during the year 2003, the Vigilance Organization, Kashmir, is stated to have received an

information that there were large scale bungling/ irregularities in the functioning of the Ancillary Medical Training School, Srinagar. Upon a surprise check, it came to surface that the Principal of the School (Respondent herein) had drawn an amount of Rs.83,918/- on account of medical reimbursement claim in respect of her father's treatment to which she was not entitled under rules, inasmuch as, her father was found neither residing with nor dependent upon her.

03. A case was, accordingly, registered vide FIR No. 16/2003 for the commission of offences punishable under Section 5 (1) (d) read with Section 5 (2) of the Prevention of Corruption Act, Samvat 2006 and Section 420 of the Ranbir Penal Code (RPC) against the Principal and, during the course of investigation, it was found that she, as the Drawing and Disbursing Officer of the Ancillary Medical Training School, had drawn two bills for an amount of Rs.68,321/- and Rs.15,597/- vide Treasury voucher No. 192 dated 26th of March, 2002 and No. 254 dated 27th of March, 2002, respectively, from the Additional Treasury Tankipora, Srinagar, on account of medical reimbursement claims for the treatment of her father without obtaining any sanction from the competent authority. It was further found that the father of the accused was neither residing with nor dependent upon the accused, but was putting up separately with his family which included his wife, sons and unmarried daughter at Narparistan, Fateh Kadal, Srinagar and the investigation of the case got concluded as proved and charge-sheet was produced in the Court of law against the accused-Principal (Respondent herein).

04. The trial Court, vide Order dated 2nd of May, 2006, charge-sheeted the Respondent-Ranjeet Kour for the commission of the aforementioned offences. The Respondent, on 2nd of June, 2007, on being examined with regard to charge, denied the charge, as such, the Prosecution was directed to lead its evidence. The Prosecution, during trial, examined as many as 15 witnesses in support of its case and the trial Court, on 26th of February, 2015, delivered the Judgment in the case, after hearing both the sides, thereby acquitting the accused of all the charges levelled against her.

05. The Appellant-State (now Union Territory) has challenged the impugned Judgment passed by the learned trial Court, *inter alia*, on the grounds that the Judgment is against the law as well as the facts and circumstances of the case; that the Judgment impugned is based on improper appreciation of evidence and non-application of mind; that the evidence brought on record by the Prosecution has not been properly appreciated, which was sufficient enough to establish the guilt of the accused beyond any shadow of doubt, inasmuch as, the evidence brought on record had fully established the essential ingredients of the offences, under which the Respondent was charged, however, the learned trial Court brushed aside the reliable and cogent evidence without any reason; that the depositions of the material witnesses, who have, in unequivocal terms and without any serious ambiguity, proved the fact that the father of the accused was putting up with his family and was not dependent upon the accused and which fact had remained unrebutted/ unshattered during the course of the trial, was ignored by the trial Court; that there was no prior sanction for drawl of the amount in question; that the cogent, trustworthy and reliable evidence led by the Prosecution was not properly appreciated and was overlooked. It has been finally prayed that the instant appeal be allowed and the impugned Judgment of acquittal passed by the learned trial Court be set aside and the Respondent be convicted for the offences of which she was charged.

06. Learned Counsel, appearing on behalf of the Appellant, while reiterating the averments made in the memorandum of appeal, has vehemently argued that by passing of the impugned Judgment on part of the trial Court, a gross miscarriage of justice has taken place, inasmuch as, the Appellant, as Prosecution, had proved its case to the hilt, so as to bring home the charges against the Respondent as accused, as she had withdrawn an amount of over Rs.83,000/- on account of two medical reimbursement claims in respect of her father's treatment, to which she was not entitled, as the Rules governing the medical reimbursement claims clearly provided that a Government official has right to withdraw a medical reimbursement

claim of a member of his/ her family, in case the said member is dependent upon the official and resides with him or her. In the case on hand, as per the learned Counsel, the Respondent had withdrawn the amount of two medical reimbursement bill claims of her father without having any right, as the father of the Respondent was not residing with her as she was proved to have been married out of her family and was putting up in a Government Quarter away from the family of her father, who had been residing at Fateh Kadal, Srinagar.

07. He has also argued that the Respondent herself was a Drawing and Disbursing Officer and was aware about the Rules governing the subject and that she had withdrawn the amounts without seeking sanction from the competent authority, as in her case, the competent authority was the Principal, Government Medical College, Srinagar, and she has failed to substantiate or place on record any sanction with regard to medical reimbursement claims that she had withdrawn for the treatment of her father. It is also submitted that the trial Court, by passing the impugned Judgment, had overlooked these important aspects of the case, ignoring the sufficient evidence led by the Prosecution to prove all those ingredients by examining the Prosecution witnesses. It has been further argued that the trial Court, by passing the impugned Judgment, had committed serious error which requires to be rectified in the interests of justice. The learned Counsel finally prayed that the impugned Judgment be set aside and the Respondent be convicted of the commission of offences of which she was charged in the interests of justice.

08. Learned Counsel for the Respondent, on the other hand, argued that the onus to prove the ingredients of the offences, of which the Respondent had been charged, was on the prosecution, which was required to prove the case beyond any shadow of doubt, to bring home the charge against the Respondent. It was argued by him that, merely, the shifting of the Respondent in view of her official position to a Government accommodation does not mean that she was living separately from her father and that her father was not dependent upon her. He argued that since

the mother of the Respondent was a retired Teacher, it was the Respondent only who, as Principal, Ancillary Medical Training School, was financially in a better position to look after both her parents, including her father regarding whose treatment she had withdrawn two bills as medical reimbursement claims as she had been looking after the medical expenses of her father. Learned Counsel for the Respondent has supported the impugned Judgment and argued that the trial Court has decided the matter in its true and correct perspective, without going into any technicalities and, also after appreciating the evidence led by the Prosecution, which was not trustworthy and convincing, so as to record conviction of the Respondent. It was finally prayed that the impugned Judgment be upheld and the appeal filed by the Appellant be dismissed.

09. Heard learned Counsel for the parties, perused the trial Court record and considered the matter.

10. The Hon'ble Apex Court, in a case titled '**Atley v. State of Uttar Pradesh**', reported as '**AIR 1955 SC 807**', while discussing the scope of an appeal against the Judgment of acquittal, observed 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, Criminal P. C. 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”.

11. The Hon’ble Supreme Court, again, in case titled **‘Babu v. State of Kerela’**, reported as **‘(2010) 9 SCC 189’**, reiterated the principles to be followed by the Court while dealing with an appeal against acquittal under Section 378 of the Code of Criminal Procedure. Paragraph Nos. 12 to 19 of the said Judgment, being relevant, are reproduced as under:

“12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the Trial Court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be more, the probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject matter of scrutiny by the appellate court. (Vide *Balak Ram v. State of U.P.* AIR 1974 SC 2165; *Shambhoo Missir & Anr. v. State of Bihar* AIR 1991 SC 315; *Shailendra Pratap & Anr. v. State of U.P.* AIR 2003 SC 1104; *Narendra Singh v. State of M.P.* (2004) 10 SCC 699; *Budh Singh & Ors. v. State of U.P.* AIR 2006 SC 2500; *State of U.P. v. Ramveer Singh* AIR 2007 SC 3075; *S. Rama Krishna v. S. Rami Reddy (D) by his LRs. & Ors.* AIR 2008 SC 2066; *Arulvelu & Anr. Vs. State* (2009) 10 SCC 206; *Perla Somasekhara Reddy & Ors. v. State of A.P.* (2009) 16 SCC 98; and *Ram Singh alias Chhaju v. State of Himachal Pradesh* (2010) 2 SCC 445).

13. In *Sheo Swarup and Ors. v. King Emperor* AIR 1934 PC 227, the Privy Council observed as under:

‘...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. The State* AIR 1954 SC 1; *Balbir Singh v. State of Punjab* AIR 1957 SC 216; *M.G. Agarwal v. State of Maharashtra* AIR 1963 SC 200; *Khedu Mohton & Ors. v. State of Bihar* AIR 1970 SC 66; *Sambasivan and Ors. v. State of Kerala* (1998) 5 SCC 412; *Bhagwan Singh and Ors. v. State of M. P.* (2002) 4 SCC 85; and *State of Goa v. Sanjay Thakran and Anr.* (2007) 3 SCC 755).

15. In *Chandrappa and Ors. v. State of Karnataka* (2007) 4 SCC 415, this Court reiterated the legal position as under:

‘(1) An appellate court has full power to review, re-appreciate 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.’

16. In *Ghurey Lal v. State of Uttar Pradesh* (2008) 10 SCC 450, this Court re-iterated 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 @ Ram Naresh* (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that 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'.

18. In *State of Uttar Pradesh v. Banne alias Baijnath & Ors.* (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include:

i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

ii) The High Court's conclusions are contrary to evidence and documents on record;

iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

v) This Court must always give proper weight and consideration to the findings of the High Court;

vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal.

A similar view has been reiterated by this Court in *Dhanapal v. State by Public Prosecutor, Madras* (2009) 10 SCC 401.

19. Thus, the law on the issue can be summarised to the effect that 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 trial Court's acquittal 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.”

12. The Hon’ble Apex Court, recently, in case titled ‘**Mohan @ Srinivas @ Seena @ Tailor Seena v. State of Karnataka**’, reported as ‘**2021 SCC Online SC 1233**’, discussed the scope of the provisions contained in Section 378 of the Code of Criminal Procedure. Paragraph No. 20 of the said Judgment is relevant to the context and same is reproduced as under:

“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”.

13. Rule 5 of the Civil Services (Medical Attendance-cum-Allowance) Rules, 1990 deals with Medical Attendance and Reimbursement of the expenses of Government employees in respect of themselves or any member of their family, dependent on them, subject to certain conditions.

14. The word ‘family’ has been defined in sub-rule (e) of Rule 3, which is extracted as under for ready reference:

“3(e) ‘Family’ means wife or husband, children including adopted children, step-children and parents (and minor brothers and minor sisters) living with the Government servant and wholly dependent upon him;

[Explanation: - Parents in the definition of family shall be treated as dependent on Government servant provided own income of either parent does not exceed Rs.5,000/- p.m.].

15. Reimbursement of the expenditure incurred on the treatment of a beneficiary-Government servant or any member of his/ her family, dependent upon him/ her is, thus, permissible, however, in case of a family member which includes parent(s) whose monthly income does not exceed Rs.5,000/-.

16. The Prosecution examined as many as 15 witnesses during trial. PW-7, namely, Sheikh Muneer Ahmad-Tehsildar, Srinagar, deposed that as per the legal heirs' certification issued to the Prosecution, he had shown family members of S. Sewa Singh as his wife and two daughters, including the Respondent herein. The Prosecution, through leading evidence, proved that the Respondent/accused had been putting up in a Government accommodation, whereas, her father was not dwelling/ staying with her. The learned Trial Court has rightly accepted that it cannot be said that the father of the accused, who was a *granthi* and having not more than Rs.5,000/- as monthly income, was not dependent upon the Respondent/accused.

17. The next question as to whether the Respondent/accused, who was herself the Drawing and Disbursing Officer, as Principal of the Ancillary Medical Training School, Srinagar, had withdrawn the medical claim without proper sanction, as in her case, sanction was required to be obtained from Principal, Government Medical College, Srinagar, having administrative control over the said Ancillary Medical Training School, Srinagar. It has been stated by one of the official from the Government Medical College, Srinagar, who was dealing with the accounts and examined by the Prosecution as a witness before the Trial Court, that the sanction, in fact, had been sought by the Respondent/accused from the Principal, Government Medical College, Srinagar and that he has processed the same, whereon the Principal had agreed by recording "Yes", however, there was no formal order with regard to its sanction. The Principal,

Government Medical College, Srinagar, who, in this situation, could be the relevant person to be examined as a witness, was not chosen to be examined by the Prosecution before the Trial Court and, as such, in view of the statement of the official from the Government Medical College, Srinagar, that the application for seeking sanction was processed and agreed to by the Principal, it cannot be said to have been proved by the Prosecution that the medical bills with regard to the claims of the dependent father of the Respondent/ accused had been drawn without sanction.

18. Every accused, as a cardinal and fundamental principle of criminal jurisdiction, is deemed to be innocent, until held guilty and, in the case of acquittal, this innocence is further reinforced and, therefore, the Appellate Court has to be slow in interfering with such an acquittal in a normal course, as is the trite in law.

19. For the foregoing reasons and observations made hereinabove, I do not find any illegality or perversity in the impugned Judgment dated 26th of February, 2015 passed by the learned Trial Court, which is, accordingly, upheld. Consequently, the appeal fails and is, thus, **dismissed**, along with any connected CrIM pending therewith.

20. Record of the Court below be sent down, along with a copy of this Judgment, for information.

(M. A. CHOWDHARY)
JUDGE

SRINAGAR

December 29th, 2023

"TAHIR"

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| i. | Whether the Judgment is speaking? | Yes. |
| ii. | Whether the Judgment is reporting? | Yes. |