

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No. 147 of 2011**

State of Chhattisgarh through the Anti Corruption Bureau, Branch
Jagdalpur, District Bastar (CG) **---- Petitioner**

Versus

1. Sanjay Kumar Mahale S/o Gangaram Mahale, Occupation Sub Divisional Inspector, Post Office Jagdalpur, District Bastar (CG)
Presently residing at Nirikshak Rail Dack Service, Durg, R/o Sector-6, Bhilai, District Durg (CG)
2. Smt. Vanita Mahale W/o Sanjay Mahale, Occupation House wife, R/o Maitry Sangh Gali, Kumharpara, Jagdalpur, District Bastar (CG)
Presently residing at Sector-6, Bhilainagar, District Durg (CG)

---- Respondents

For Petitioner/State	:	Shri Satish Gupta, Govt. Advocate
For Respondents	:	Shri R. N. Pusty, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****04.10.2016**

The present CrMP has been preferred seeking for grant of leave to appeal against the judgment of acquittal dated 17.08.2010 passed by the Special Judge (Prevention of Corruption Act), Bastar, District Jagdalpur in Special Case No. 02 of 2004.

2. Brief facts relevant for adjudication of the present CrMP are that the respondent no.1 Sanjay Kumar Mahale was working as Field Officer in the Post Office at Jagdalpur. Hence, he came within the definition of a public servant. It is said that complainant Niwesh Kumar Sonber (PW-8) had moved an application to the Postal Department for grant of licence for sale of postal articles as there was a requirement of a verification report from the

Sub Divisional Inspector, Post Office, Jagdalpur and at the relevant point of time respondent no.1 held the said post. It is alleged that for grant of the said verification report respondent no.1 had sought for bribe of Rs.1,000/- from Niwesh Kumar Sonber (hereinafter referred as the complainant). The complainant was not inclined to give bribe to respondent no.1 and therefore, he approached the Anti Corruption Bureau of the State who at the behest of the complainant laid a trap against respondent no.1. As per the trap team, it was directed that the complainant would go to the house of respondent no.1 on 11.09.2003 and give the amount to him. Thereafter, he would come out from the house and give a signal to the trap team who in turn would raid the residence of respondent no.1.

3. It is said that on 11.09.2003, the complainant visited the house of respondent no.1 and gave the amount of Rs.1,000/- allegedly demanded by respondent no.1. But, in stead of receiving the said amount directly by respondent no.1 it is alleged that the said amount was received by the wife of respondent no.1 i.e. respondent no.2 in the present petition who was present there during the time when the complainant reached the house of respondent no.1 for making payment. After providing the said money to respondent no.2 the complainant came out of the house and signaled the trap team who immediately conducted a raid but could not find the money as it is alleged that by that time respondent no.2 had already taken the said amount to one of the nearby grocery shops and had got the amount converted into different currency notes of lesser denomination. Thereafter, on the basis of the report submitted by the said trap team, a case was registered against the respondents and charge sheet was filed against them. The matter was put before the Special Judge, Prevention of Corruption Act, Bastar at Jagdalpur where the case was registered as Special Case No. 02 of 2004.

4. In the course of trial the prosecution examined as many as 15 witnesses and on behalf of the defence 6 witnesses were examined.

5. After the trial was complete, the trial Court vide its judgment dated 17.08.2010 found that the prosecution has not been able to establish the case beyond reasonable doubt against the respondents in as much as there were various omissions and contradictions in the statement of the prosecution witnesses. It was also found that there were material contradictions in the statement of the complainant himself made at different stages. Accordingly, granting the benefit of doubt, the respondents were acquitted from the charges leveled against them vide order dated 17.08.2010.

6. It is this judgment which has been sought to be assailed by the State seeking for grant of leave to appeal.

7. During the course of hearing State counsel highlighted the evidence of the complainant Niwesh Kumar Sonber (PW-8) who is supposed to be the star witness on behalf of the prosecution. According to the State counsel, the Court below has not properly appreciated the evidence which has been adduced by the said PW-8 as well as the other prosecution witnesses particularly the members of the Trap team. According to the State counsel, the Court below has committed an error of law to the extent of not appreciating the fact that in fact the amount which was given to the complainant to be provided to the accused was in fact recovered at the instance of respondent no.2 from a nearby Kirana shop where she had gone in the morning and given the said currency notes to the shop keeper for obtaining change of lesser denomination. According to the State counsel, the statement of the said shopkeeper has not been properly construed by the Court below while passing the judgment of acquittal in favour of the respondents. According to the State counsel, the judgment of

acquittal passed by the Court below deserves to be reconsidered as there has been substantial materials produced by the prosecution witnesses during the course of evidence both ocular as well as documentary proof to substantiate the contentions of the prosecution. Thus, prayed for grant of leave to appeal for assailing the impugned judgment of acquittal.

8. Counsel for the respondents opposing the application seeking leave to appeal submitted that a plain perusal of the impugned judgment itself clearly indicates the reasons which compelled the Court below to acquit the respondents from the charges leveled against them and the said order being a well reasoned order does not warrant any interference. According to the respondents, the Court below has minutely considered the evidence which was brought on record by the prosecution and reached to the conclusion that there were material omissions, contradictions and improvements in the statement of the prosecution witnesses. According to the respondents, the complainant himself has made different statements at different stages in as much as the Panchnama which was prepared on the date of incident i.e. 11.09.2003 bears a different story as compared to the statement of the complainant recorded under Section 161 CrPC. Likewise, both the statements of the complainant i.e. Panchnama report as well as the 161 CrPC statement are also in contradiction to the statement that he had given before the Court below as PW-8. These material contradictions which have crept in the statements of the complainant led to the Court below in granting benefit of doubt in favour of the respondents leading to their acquittal. According to the counsel for the respondents, once when there is a categorical finding of doubt in the mind of the Court below, unless there is strong, cogent and substantial material, the order of acquittal granted in favour of the respondents should not be lightly interfered. Thus, prayed for rejection of the instant CrMP.

9. Counsel for the respondents relied upon the decision of the Supreme Court reported in the case of Dilawar Singh and Others Vs. State of Haryana along with other connected matters reported in (2015) 1 SCC 737 in respect of the parameters which have to be considered by the Court while granting leave to appeal.

10. Having considered the rival contentions put forth by the counsel appearing on either side and on careful consideration of the materials brought on record what clearly reflects from the documents is that there are material contradictions in the statements of the complainant PW-8 at regular intervals firstly the fact which he had narrated at the time of preparation of the Panchnama on the date of incident, secondly the fact narrated in his 161 CrPC statement and lastly the deposition that he has made before the Court below in the course of the prosecution evidence being recorded. In the instant case, the Court below after dealing with the prosecution witnesses has pointed out different contradictory statements made by them at different stages of the trial. The Court below has emphatically held that there are omissions, contradictions and improvements in the version of the prosecution evidence which creates a great element of doubt. It is also a settled position of law that whenever there is a doubt created in the mind of the Court, the benefit of which should always go in favour of the accused person.

11. It is settled position of law that in an appeal against an order of acquittal only in exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse can the Appellate Court interfere with the order of acquittal. Recently, Hon'ble the Supreme Court in the case of Phula Singh Vs. State of Himachal Pradesh, AIR 2014 SC 1256, in Para-10, has in very categorical term held that: "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. Once there is an order of acquittal in favour of the alleged accused person, the same should not be interfered with very lightly unless there is a prima facie strong case with cogent, sufficient and substantial proof in favour of the prosecution brought before the Court below and which has not been considered or has been overlooked by the Court below, only then can the order of acquittal have a scope of interference.

The law in this regard is by now well settled in a series of judgments of the Hon'ble Supreme Court wherein the Supreme Court has in very categorical terms held that whenever there is an order of acquittal, the higher Courts not to upset the holding without there being very convincing reasons and comprehensive considerations. That while reappreciating and reconsidering the evidence upon which the order of acquittal is based, certain other principles pertaining to other facets are to be borne in mind.

13. According to the Supreme Court what the appellate Court must bear in mind is 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.

14. If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court. The high Court is also required to see

that unless there are substantial and compelling circumstances, the order of acquittal is not required to be reversed in appeal.

15. It is trite here to refer to a few decisions in this regard by the Hon'ble Supreme Court:

- 2007 (4) SCC 415 – Chandrappa v. State of Karnataka.
- 2012 (1) SCC 602 – State of Rajasthan v. Shera Ram.
- 2013 (5) SCC 705 – Shivasharanappa v. State of Karnataka.
- AIR 2009 SC 1542 (Para 12) – State of Punjab v. Sukhchain Singh & Anr.
- 2012 (6) SCC 589 (Para-27) – Rohtash v. State of Haryana.

It is also relevant at this juncture to highlight the recent view of the Supreme Court in the case of Dilawar Singh (Supra), paragraph-36 relied upon by the respondent which is reproduced hereunder:

“The court of appeal would not ordinarily interfere with the order of acquittal unless the approach is vitiated by manifest illegality. In an appeal against acquittal, this Court will not interfere with an order of acquittal merely because on the evaluation of the evidence, a different plausible view may arise and views taken by the courts below is not correct. In other words, this Court must come to the conclusion that the views taken by the learned courts below, while acquitting, cannot be the views of a reasonable person on the material on record.”

16. Thus, this Court is of the considered view that the finding arrived at by the Court below is purely in accordance with law and the Court below has not committed any error on law or on fact in reaching to the said conclusion of acquitting the respondents of the charges leveled against them.

17. Thus, no strong case is made out by the petitioner for grant of leave to appeal against the judgment of acquittal dated 17.08.2010. Accordingly, the present CrMP stands dismissed.

Sd/-
P. Sam Koshy
Judge