

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.149 OF 2004

The State of Maharashtra)....Appellant
(Org.Complainant)

V/s.

Vilas Santram Sugate)
Age-41 years, Occ.Service,)
R/o. Gajawanekar Chawl, Nipani,)
Tal.Chikkodi, Dist. Belgaum)....Respondent
(Org.Accused)

Mr.S.V.Gavand APP for appellant-State.
Mr.Anand S.Patil for respondent.

CORAM : K.R.SHRIRAM,J
DATE : 18.2.2020

ORAL JUDGMENT:-

1. This is an appeal impugning an order and judgment dated 20.8.2003 passed by the Special Judge, Kolhapur, acquitting respondent (accused) Vilas Santram Sugate of offences punishable under sections 7 (*Offence relating to public servant being bribed*), 13(1)(d) read with 13(2) (*Criminal misconduct by a public servant*) of Prevention of Corruption Act 1988 (PC Act).

2. Accused was working as a surveyor at Murgud in Irrigation department. Complainant Ramchandra Santaram Patil (PW1) who

had retired as primary school teacher had 7 acres of land in the village Kurukali, Tal.Kagal. Along with 10 others, he made an application to the Executive Engineer for necessary permission to put a 30 H.P pump and to lift water from Vedganga river. The application was accompanied by 7/12 extract of the land, village map of Kurukali and the lay out plan. There was also an application that instead of oil engine, permission be granted to lift the water with the help of 30 H.P electric motor pump. These applications have been filed in Irrigation department between 7.2.1994 to 4.2.1995. All documents have also been submitted.

3. On 16.12.1994, it is alleged, accused told complainant that he has to pay Rs.200/- per H.P totaling to Rs.6000/- as bribe and unless that amount is paid, the work will not be done. He was also told to pay the amount within one month and take necessary permission. Complainant as a school teacher could not accept the thought of bribing as his conscience did not permit. After a month, complainant again met accused who once again demanded Rs.6000/- which was reduced to Rs.5000/-. On or about March-April 1995, a 3rd demand was made to reduce the demand of Rs.5000/- and that too in the presence of one Ankush Patil. This Ankush Patil has been constantly with complainant at every stage beginning from the alleged 3rd

demand. Ankush Patil is supposed to have been present on 24.4.1995 when the 4th demand was made when it was reduced from Rs.5000/- to Rs.4000/-. At that stage complainant (PW1) is supposed to have paid Rs.500/- that he had with him and a deal was finalized with accused that further amount of Rs.1500/- was to be paid on 27.4.1995 and the balance Rs.2000/- will be given while the sanction was being given. Ankush Patil also went to the office of Anti Corruption Bureau with complainant, was there when the pre trap panchanama was made, was present during the trap, was part of the post trap panchanama and later investigation but this Ankush Patil has not been produced as a witness.

4. On 26.4.1995, PW-1 complainant contacted Anti corruption office Kolhapur and met one Mirashi, Dy.S.P. Complaint was taken down by Mirashi, Dy.S.P. and he decided to lay a trap. Pre trap procedure was complied with and it was decided to trap accused on 27.4.1995. The raiding party reached the office of accused at about 12.30 p.m. on 27.4.1995. When complainant, Ankush patil and panch witness Dipak Shamrao Kamble (PW-2) reached the office of accused, they saw accused near the door and all 3 went with accused inside his office. It is alleged that at that time, accused told that necessary report has been prepared and sent for signature and

thereafter he made the demand. PW-1 took out the amount of Rs.1500/- from his left side chest pocket by his right hand and handed over the amount to accused. Accused accepted the amount with his right hand, counted the notes which were 15 x 100 and kept the amount in the right side pocket of his Pant. Thereafter, PW-1 invited accused to have tea with him in a tea stall across the road and while they were going to the tea stall, PW-1 gave signal as instructed and then PW-6 Mirashi, Investigating officer (I.O.) swooped down and caught hold the hands of accused in the middle of the road. Accused then was taken to one of the empty room in the office of irrigation department and the tainted notes were removed from his pocket by the other panch witness. The hands of accused were checked and there were anthracine marks on both the hands and also on some part of the right side of the shirt near the pant pocket. Post trap panchanama later was prepared and complaint was lodged. After due investigation, papers were sent to S.P. ACB, Pune in order to get sanction from the competent authority. When sanction was received, charge-sheet was submitted. Charge was framed and accused pleaded not guilty and claimed to be tried.

5. The defence is of total denial and in the statement recorded under section 313 of Cr.P.C., accused has stated, in response to

question no.58, that he had gone to complainant Ramchandra Patil for recovery of the arrears of water cess and as he was pressing hard for those arrears, complainant got annoyed and he has filed this false case. Accused also says that PW-2 has deposed that Investigating officer (PW-6) wanted to make the trap successful. In the statement submitted by him accused says he never met Ankush Patil. This has a great bearing because Ankush Patil has not been examined. Moreover, accused says that on 27.4.1995 in the afternoon PW-1 came alone and inquired about the water connection to which accused replied that he has forwarded the papers to the superior officer after endorsement and he should come after 8 to 10 days because that person is travelling for about 3 to 4 days. After he returned, endorsement will be made. At that stage PW-1 alone invited accused to tea and when they were walking towards the tea stall, PW-1 was at the right side of accused. Suddenly anti corruption people swooped and PW-1 started to push some money into right side pant pocket. At that time lot of shouting and pushing happened and anti corruption people took him into the police station and not to the office as stated in the panchanama of PW-1, PW-2 or PW-6. He says that there is no room in the irrigation department office which can be made dark and therefore, he was taken to the police station and the whole case is false.

6. To prove its case, prosecution listed 15 persons in its list of witnesses in the charge-sheet but led evidence of only 5 witnesses. These 5 witnesses are Ramchandra Santram Patil, complainant as (PW-1); Deepak Shamrao Kambale, panch witness as (PW-2); Shivgonda Hari Patil, Branch Sectional Engineer as (PW-3); Deepak Rangnathrao Kandi, sanctioning authority as (PW-4); and Govind Shankarrao Mirashi, Investigating officer as (PW-5).

7. The Apex Court in ***Ghurey Lal Vs. State of U.P.¹*** has culled out the factors to be kept in mind by the Appellate Court while hearing an appeal against acquittal. Paragraph Nos.72 and 73 of the said judgment read as under:

72. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty.

The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must

¹ (2008) 10 SCC 450

also be substantial and compelling reasons for holding that trial court was wrong.

73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

i) The trial court's conclusion with regard to the facts is palpably wrong;

ii) The trial court's decision was based on an erroneous view of law;

iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

v) The trial court's judgment was manifestly unjust and unreasonable;

vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.

vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

8. The Apex Court in many other judgments including ***Murlidhar Vs. State of Karnataka***² has held that unless, the conclusions reached by the trial court are found to be palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, Appellate Court should not interfere with the conclusions of the Trial Court. Apex Court also held that merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view.

We must also keep in mind that there is a presumption of innocence in favour of respondent and such presumption is strengthened by the order of acquittal passed in his favour by the Trial Court.

9. The Apex Court in ***Ramesh Babulal Doshi Vs. State of Gujarat***³ has held that if the Appellate Court holds, for reasons to be recorded that the order of acquittal cannot at all be sustained because Appellate Court finds the order to be palpably wrong, manifestly erroneous or demonstrably unsustainable, Appellate Court can reappraise the evidence to arrive at its own conclusions. In other words, if Appellate

² (2014) 5 SCC 730

³ 1996 SCC (cri) 972

Court finds that there was nothing wrong or manifestly erroneous with the order of the Trial Court, the Appeal Court need not even reappraise the evidence and arrive at its own conclusions.

10. So far as the first and second demand are concerned, i.e., on 16.12.1994 and 6.1.1995 (PW-1 says 2nd demand was made one month later), there are no witnesses. It is only the statement of PW-1. For the 3rd and 4th demand, Ankush Patil was a witness but he has not been examined. So far as demand is concerned, therefore only witness who has stepped into box to give evidence is PW-1. Is he a reliable witness or can his words be relied upon? PW-1 claims to be retired school teacher and he has submitted applications of 11 persons including himself. He says even the amount of Rs.4000/- demanded was too much for him to pay. But if that was so, he could have asked other 10 persons to contribute because all were benefiting. Secondly, PW-1 and the 10 others all had received notices from the surveyor imposing penalties for illegally drawing water from the river. The arrears demanded were from the year 1972-1973 upto early 1995. Here is a man who was illegally drawing water from the river. In his cross-examination, he says that he had tendered personally the applications of 11 persons for obtaining water (Exh.30). It is true that notices were issued by the surveyor imposing penalty and some of the

persons have deposited those amounts of penalty. PW-1 also says that it is true that arrears from 1972-73 were claimed by the notices and there was displeasure amongst the people. He further says “we all 11 persons therefore decided to seek regular permission to avoid harassment and I therefore, tendered applications of those 11 persons including myself on 5.7.1994 personally”. Therefore here is a man who was indulging in illegality and it looks like he was very upset as penalty/arrears was demanded. Demand was from 1972-73 i.e., for 22 years. PW-1 also says that “I had not however asked for contribution of those other 10 persons”. It is strange that 30 BHP was to be used by all the 11 persons and naturally the amount demanded would have been shared by all the 11 persons. PW-1 also says that he never informed them about the demand of bribe and the fact that he has approached A.C.B to trap accused. Why did he not, I wonder. On 24.4.1995, PW-1 was not however, aware that permission was already granted 7 months before that time. If such a permission has been granted, why would accused demand any money? PW-1 strangely says he tried to meet the superior of accused but could not find them at any time. But PW-1 has not made any complaint at the Kolhapur office of that department. In fact, by letter of 20.9.1994 of Executive Engineer, permission has already been granted. PW-1 also says the other applicants did not know that he was carrying Rs.1500/- for

laying a trap. PW-1 admits that it is not mentioned in his complaint that Ankush Patil had accompanied him at the time of lodging the complaint. Admittedly, PW-1 has paid the entire penalty amount after the trap happened. I wonder why did he not make the payment earlier itself. Therefore the stand of the defence that complainant (PW-1) was upset that accused had gone to inspect the land and filed a report and notice was issued demanding arrears because of which he decided to trap accused appears more probable. It is impossible to believe that PW-1 did not know that permission had been granted in September-1994 itself. Therefore, evidence of PW-1 does not inspire confidence.

11. As regards the trap, (a) PW-1 says that he, panch Kamble and Ankush Patil met accused at the door and they all went inside.

PW-2 the panch witness says accused was standing on the ground of municipality. PW-2 does not say where in the municipality building, PW-1, PW-2 and Ankush Patil met accused.

PW-6 says “while they were going in the office they stopped near one person. I saw that, these persons stopped near one person and talked with him and all of them went inside the office”.

Therefore, I see 3 different versions.

(b) Secondly, PW-1 says “we met there accused at the door and

we all went inside the office. I then inquired with him about the progress of the work and he had told that he had forwarded my report to superior and my work would be done in short time and then he further inquired with him about his money.”

PW-2 says “..... while going towards the the irrigation office, one person was standing on the ground of municipality..... Then we went near Mr.Sulkate, complainant wished by saying him Namaskar. Then the accused Sukate asked the complainant whether he brought money as told on the last Monday. The complaint said to him that he has brought the amount of Rs.1500/-. The office of the accused was just near and he told us to come there..... Then accused Sukate demanded the bribe amount and extended his right hand before Complainant. Complainant then took the currency notes kept in his shirt pocket by his right hand and put it on the palm of the accused”.

(c) As regards the demand, PW-1 says I then took out amount by my right hand from my chest pocket and gave them into hands of accused and he took them by his right hand.

Whereas PW-2 says it was accused who extended his right hand and then PW-1 removed the money from his pocket and gave.

13. This is a case under Prevention of Corruption Act and in my view, even small contradictions really will make a huge difference.

14. At the cost of repetition, Ankush Patil has not been produced to give evidence. Ankush Patil was present at the time of alleged payment and he should have been examined by the prosecution. Prosecution has stated that they decided to drop Ankush Patil as a witness because they felt he was not going to support prosecution's case.

15. It is a right of every accused to get just and fair trial. Examination of Ankush Patil would have thrown much light and if he had only stepped into the box, he would have stated exactly what happened and whether it has happened. Therefore, the demand and acceptance appear to be doubtful. As noted earlier, PW-1-complainant is not a witness who inspired much confidence. The 1st demand is said to be on 16.12.1994 and the final settlement is supposed to have happened on 24.4.1995. Records indicate accused had already submitted those papers to Superior officer much prior to 24.4.1995 and that too in September-1994 itself. Therefore, it is difficult to accept that all 11 persons shall wait for such a long time for making payment and they would have probably contributed because it

was their urgent need to get water with the help of electric motor instead of oil engine. It is possible that all these persons were upset that accused had made a recommendation after a survey about the illegally drawing of water.

16. Further PW-3 says in his examination-in-chief that accused visited the site and submitted a report on 25.4.1995 and the application of complainant and relevant papers were submitted by accused to his office. PW-3 also in his cross-examination stated that Executive Engineer, Kolhapur was the final authority to grant sanction and the Executive Engineer had sanctioned the water supply for these persons in the year 1994. Thus, no case of these 11 persons was pending in our office in the year 1994. In such a situation where was the question of accused showing any favour to applicant.

17. There are many such grounds which have been raised in the judgment impugned to acquit accused. For the sake of brevity, I am not reproducing the same but those observations have my approval.

18. In so far as the offence under Section 7 of PC Act is concerned, it is a settled position in law that demand of illegal gratification is *sine qua non* to constitute the said offence and mere recovery of currency

notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. This position has been well laid down in several judgments of the Apex Court and all other High Courts including Bombay High Court (*B. Jayaraj V/s. State of Andhra Pradesh*⁴). In my view, prosecution has not proved beyond reasonable doubt the guilt of accused.

19. There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to accused 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, accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting accused, the Trial Court observed that prosecution had failed to prove its case.

20. In the circumstances, in my view, the opinion of the trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with.

4 (2014) 13 SCC 55

21. Appeal dismissed.

22. The Government/Appropriate Authority shall pay over to respondent, within a period of 30 days from today, all pensionary or other benefits/dues stalled, in view of pendency of this appeal. If during the service, in view of this matter, the promotions or increments of accused have been affected, the concerned Authority/Department will pay, proceed and calculate on the basis that there was no such matter ever on record against accused and will factor in all promotions and increments that accused would have been entitled to and all the amounts shall be accordingly paid within 30 days.

After 30 days interest at 12% p.a. will have to be paid by Government/ Appropriate Authority to respondent.

No authority shall demand certified copy for reimbursing the benefits/dues as directed above. All to act on authenticated copy of this order. Certified copy expedited.

23. The way prosecution has gone about in this case shows that a course correction is required. The Apex Court in *State of Gujarat V/s. Kishanbhai and Ors.*⁵ in paragraphs 22, 23, 24 and 25 has stated as

5. (2014) 5 SCC 108

under :

22. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore, essential that every State should put in place a procedural mechanism, which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State, to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A standing committee of senior officers of the police and prosecution departments, should be vested with aforesaid responsibility. The consideration at the hands of the above committee, should be utilized for crystalizing mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course- content drawn from the above consideration. The same should also constitute course-content of refresher training programmes, for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials, should be vested in the same committee of senior officers referred to above. Judgments like the one in hand (depicting more than 10 glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course content will be reviewed by the above committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of Courts, and on the basis of experiences gained by the standing committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence, when they are made liable to suffer departmental action, for their lapses.

23. On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be

identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the concerned official may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.

24. A copy of the instant judgment shall be transmitted by the Registry of this Court, to the Home Secretaries of all State Governments and Union Territories, within one week. All the concerned Home Secretaries, shall ensure compliance of the directions recorded above. The records of consideration, in compliance with the above direction, shall be maintained.

25. We hope and trust the Home Department of the State of Gujarat, will identify the erring officers in the instant case, and will take appropriate departmental action against them, as may be considered appropriate, in accordance with law.

24. Copy of this order be placed before the Director General of Police for information.

(K.R.SHRIRAM,J)