# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## CRIMINAL APPELLATE JURISDICTION
## CRIMINAL APPEAL NO.94 OF 2006

The State of Maharashtra ) ….Appellant/Complainant

V/s.

Gangaram Baburao Jagtap )
Age 45 years., Occ.: Talathi )
R/o. Fatyapur, Taluka & District – Satara ) …..Respondent/Accused

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Ms. Pallavi Dabholkar, APP for State – Appellant.
Mr. Heramb S. Kadam i/b. Mr. S.A. Sawant for respondent.

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**CORAM : K.R.SHRIRAM, J.**
**DATE : 6th MARCH 2020**

**ORAL JUDGMENT :**

1 This is an appeal impugning an order and judgment dated 19th October 2004 passed by the Special Judge for Anti Corruption, Satara, acquitting respondent (accused) of offences punishable under Section 7 (*Public servant taking gratification other than legal remuneration in respect of an official act*), Section 13 (1) (d) read with Section 13 (2) of Prevention of Corruption Act, 1988 (PC Act).

2 Complainant Ramchandra Dadasaheb Shinde (PW-1) had purchased some agricultural land. After about 8-9 months, further agricultural land was purchased in his brother’s name. A week thereafter, PW-1 gave a photocopy of the sale deed and relevant documents to accused, who was the Talathi of the village Venegaon and requested him to mutate the name of his younger brother in 7/12 register. Accused, however, avoided doing the same on one ground or the other and on 16th October 1999, when PW-1 met him, accused told him that he has to give Rs.1000/- on

20th October 1999 at Tahasil office, Satara. PW-1 realised that unless the bribe amount was given, the work will not be done and therefore, decided to approach the Anti Corruption Bureau (A.C.B.). PW-1 then lodged the complaint with PW-4 – Vidhyadhar Shete, the Investigating Officer and after complying with the pre-trap formalities, the A.C.B. office, Satara, decided to trap accused on 20th October 1999. Complainant and PW-3, the panch witness, met accused on 20th October 1999 and complainant gave Rs.1000/- tainted currency to accused, who accepted it with his right hand and put it in his pocket on the right side of his pant. Thereafter, PW-1 gave the agreed signal, the raiding team swooped and PW-4 caught the wrist of accused. Under ultraviolet light, the hand of accused was examined and so also the pocket and anthracene marks were found. Post-trap panchnama was prepared, investigation commenced and after obtaining sanction from the Sub Divisional Officer – Kanhuraj Harichandra Bagate (PW-2), complaint was filed. Once the further investigation was over and statements were recorded, chargesheet was filed and accused pleaded not guilty and claimed to be tried.

3 To prove its case, prosecution led evidence of four witnesses as against 16 witnesses listed in the chargesheet. No independent witness was examined. The four witnesses are Ramchandra Dadasaheb Shinde, complainant (PW-1); Kanhuraj Harichandra Bagate, Sub Divisional Officer (PW-2); Sambhaji Bhausaheb Budhawale, panch witness (PW-3); and Vidhyadhar Bharma Shete, Investigating Officer (PW-4).

4 The Apex Court in ***Ghurey Lal V/s. 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 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:*
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> *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";*

1. (2008) 10 SCC 450

> *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.*

The Apex Court in many other judgments including ***Murlidhar & Ors. V/s. 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.

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2. (2014) 5 SCC 730

The Apex Court in ***Ramesh Babulal Doshi V/s. 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 Court finds that there was nothing wrong or manifestly erroneous with the order of the Trial Court, the Appeal Court need not even re-appraise the evidence and arrive at its own conclusions.

5 Demand and acceptance of gratification other than legal remuneration is the crux of a bribery case. Besides, Section 7 of the PC Act lays down that agreement to accept or the acceptance of gratification other than legal remuneration is to be the motive or reward for doing or forbearing to do any official act or for showing or forbearing to show in exercise of his official functions any favour or disfavour to any person, i.e, complainant. We will have to scrutinize the evidence on record and see if accused had made demand for Rs.1000/- as gratification other than legal remuneration from complainant for mutating the name of his brother in the revenue record against the agricultural land which they had purchased under a conditional sale deed or the amount was given to him for the purpose of stamp papers and payment of registration fee etc.

3. 1996 SCC (cri) 972

6 In the first place, it has to be noted that PW-1 in his complaint as well as in his deposition, has stated that photocopies of sale deed relating to his younger brother were given to accused for effecting mutation. But in the documents seized, no such photocopies were available. Secondly, which is really fatal to prosecution's case is that complainant alleged that on 16th October 1999, when he met accused, accused made demand of Rs.1000/- as bribe. It has come on record that between 15th October 1999 and 26th October 1999 accused was on medical leave. The entries made in the service book of accused shows that accused was on leave from 15th October 1999 to 26th October 1999 on medical grounds. There is no evidence to show that during his medical leave, accused came to the office on 16th October 1999. Therefore, prosecution's case that PW-1 met accused on 16th October 1999, when accused demanded Rs.1000/- for making the mutation entry, is not believable.

7 One more point is that even the application moved by complainant for making the mutation entry is not coming forth. PW-2, the sanctioning authority, has in his cross examination stated that he came to know that the requisite mutation entry was made by accused and he also came to know that after some months of making that entry, complainant had given his complaint in A.C.B. office, Satara. PW-2 also says that the Revenue Circle Officer has to take decision within 8 days after service of notices on the interested parties and 7/12 extract cannot be issued by the Talathi unless the entry is certified by Revenue Circle Officer. PW-2 further says that the job

of Talathi comes to an end after taking entry and effecting the service of the notices on the concerned person and in the instant case, PW-2 had found that Talathi (accused) had made entry, effected service of notices and had sent the matter to Revenue Circle Officer for certification. Therefore, there was nothing left to be done by accused. Interestingly, PW-2 says after he read the documents, he felt suspicious about the genuineness of complaint lodged by PW-1 against accused. PW-2 also says he thought over whether permission for prosecution has to be granted and PW-2 required to be protected. Nevertheless, PW-2 went ahead and granted the sanction.

8 These are grounds alongwith many other which have been recorded in the judgment impugned which prevailed over the Trial Court to pass the order of acquittal. For the sake of brevity, I am not reproducing those points but certainly those points have the approval of this Court.

9 Even for a moment we accept that there was a presumption under Section 20 of the PC Act, the same is a rebuttable presumption and the burden placed on accused for rebutting the presumption is one of preponderance of probabilities.

10 Paragraph 11 of ***State of Gujarat V/s. Navinbhai Chandrakant Joshi & Ors.*** [4] reads as under :

> *11. So far as the presumption raised under Section 20 of the Act for the offence under Section 7 of the Act is concerned, it is settled law that the presumption raised under Section 20 of the Act is a rebuttable presumption, and that the burden placed on the appellant for rebutting the presumption is one of preponderance of probabilities. In C.M. Girish Babu Vs. CBI Cochin, High Court of*

4. (2018) 9 Supreme Court Cases 242

*Keralar (2009) 3 SCC 779, this Court held as under:-*

> *"21. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accuse charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence.......*
>
> *22. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt..."*

*Since it is established that the accused was possessing the bribe money, it was for them to explain that how the bribe money has been received by them and if he fails to offer any satisfactory explanation, it will be presumed that he has accepted the bribe."*

11 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 rightly observed that the prosecution had failed to prove its case.

12 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, need not be interfered with.

13 Appeal dismissed.

14 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.

**(K.R. SHRIRAM, J.)**