

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.378 OF 2004**

State of Maharashtra)Appellant/Complainant

V/s.

Raj Ahmed Noormohammed Raje)
Age – 35 years, Occu.: Service (PSI))
Resident of At and Post Parner,)
Taluka – Parner, District – Ahmednagar)Respondent/Accused

Ms. Anamika Malhotra, APP for State – Appellant.

**CORAM : K.R.SHRIRAM, J.
DATE : 21st FEBRUARY 2020**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 30th September 2003 passed by the Special Judge, Solapur, acquitting accused of offences punishable under Section 7 (*Public servant taking gratification other than legal remuneration in respect of an official act*), Section 13 (2) read with Section 13 (1) (d) of Prevention of Corruption Act, 1988 (PC Act).

2 One of the grounds for acquittal is that there is no valid sanction for prosecuting accused under Section 19 of PC Act. There are only three witnesses for prosecution, viz., complainant as PW-1; panch witness as PW-2; and Investigating Officer as PW-3. The Investigating Officer (PW-3), in his cross examination, states that accused was appointed as direct recruitment as PSI by the Home Department, i.e., Government is the appointing authority and powers were delegated to Director General of Police, Maharashtra. In his cross examination, PW-3 states “..... *I doubt whether Commissioner is the*

removing authority. I was doubtful whether Commissioner of Police had power to accord sanction. I, therefore, had made reference to confirm if Commissioner of Police had authority to pass sanction order. I am still doubtful whether Commissioner of Police is authority to accord sanction.....”.

Ofcourse, the Trial Court has acquitted accused even considering the merits of the case.

3 The Apex Court in ***State of Maharashtra V/s. Mahesh Jain***¹ has held that grant of sanction is a sacrosanct act and is intended to provide safeguard to a public servant against frivolous and vexatious litigation. Grant of sanction is an administrative function and the sanctioning authority is required to *prima facie*, reach the satisfaction that relevant facts would constitute the offence. Satisfaction of the sanctioning authority is essential to validate an order granting sanction.

4 The Apex Court in *Mahesh Jain (supra)* has referred to ***Mohd. Iqbal Ahmed V/s. State of Andhra Pradesh***² where the Apex Court held “it is well settled that any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void, *ab initio*.”

5 Therefore, there is no valid previous sanction. The Learned Single Judge of this Court in ***Laxman through the legal heirs and another V/s. State of Maharashtra***³ relying upon *Nanjappa (Supra)* observed in that

1. (2013) 8 SCC 119

2. (1979) 4 SCC 172

3. 2019 SCC Online Bom 1020

case time of 20 years had lapsed as the incident happened in March 1999 and concluded that no purpose could be achieved by directing a fresh trial.

6 In the case at hand, the incident happened on 27th August 1998. The case was received by the Sessions Court on 30th January 2002 and was registered on the same day. It was decided on 30th September 2003, duration being 5 years, 1 month and 3 days. The appeal has been lodged in this Court on or about 11th March 2004 and was admitted on 18th September 2006. Accused was 29 years of age, when the complaint was filed and would be now approximately 51 years of age.

Should I set aside the order and permit the launch of fresh prosecution against accused at this distinct point of time, is what we have to consider next. In my view, putting the clock back at the stage when the prosecution witnesses themselves may not be available, would serve no purpose. That apart, the Trial Court had, even upon appreciation of the evidence, although it was not required to do so, had held that the prosecution has failed and acquitted accused.

7 The Apex Court in ***Ghurey Lal V/s. State of U.P.***⁴ 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

4. (2008) 10 SCC 450

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:

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.

The Apex Court in many other judgments including ***Murlidhar & Ors. V/s. State of Karnataka***⁵ 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.

The Apex Court in ***Ramesh Babulal Doshi V/s. State of Gujarat***⁶ 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

5. (2014) 5 SCC 730

6. 1996 SCC (cri) 972

conclusions.

8 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*⁷).

9 I have perused the impugned judgment, considered the evidence and also heard Ms. Malhotra, learned APP. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment in its consideration on the merits of the case. The views expressed by the Trial Court that prosecution has failed to prove beyond reasonable doubt, cannot be faulted and it is settled law that if one of the two views are possible, the appellate court should not interfere. In the circumstances, I feel no purpose will be served to resume the proceedings over and again. Accused and his family would have already suffered ignominy of allegations and trial. They need not go through that again.

10 In the circumstances, appeal is dismissed.

11 The Government/Appropriate Authority shall pay over to respondent, within a period of 30 days from today, all benefits/dues stalled,

7. (2014) 13 SCC 55

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 judgment. Certified copy expedited.

(K.R. SHRIRAM, J.)