

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1313 OF 2003**

The State of Maharashtra)Appellant/Complainant

V/s.

1. Masu Krishna Chavan,	)
Age about : 52 years, Occ.: Service-Circle	)
Officer, Karvir, District - Kolhapur	)
2. Eknath Parasu Satpute,	)
Age about : 30 years, Occ.: Service,	)
R/o. Sadoli Khalasa, Tal.: Karvir,	)
Dist.: Kolhapur	)Respondents/Accused

Ms. Anamika Malhotra, APP for State – Appellant.

**CORAM : K.R.SHRIRAM, J.
DATE : 12th FEBRUARY 2020**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 2nd June 2003 passed by the Special Judge, Kolhapur, acquitting the 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), 13 (2) and Section 12 (*Punishment for abetment of offences defined in section 7 or 11*) of Prevention of Corruption Act, 1988 (PC Act).

2 It is prosecution's case that complainant – Pandit Bhausaheb Ranadiwe (PW-1) was having agricultural land of 1 Acre 30 Gunthas at Kasaba Bawada. His brother also has a share in that land. Another land admeasuring 30 R was in cultivation by his father as a tenant. His father died on 11th December 1993. His brother Shamrao Bhausaheb Ranadiwe and complainant were cultivating this tenanted land separately. After the death of

the father, complainant gave an application on 26th December 1993, i.e., 15 days after the death of his father, in Tahasil office at Karvir for entering his name as tenant in the tenanted land. PW-1 also gave an application in Gav Chavadi on 29th December 1993 for entering his name in the ancestral land as an owner. Notices were issued from Kasaba Chavadi to the original land lady Shobha Divate and complainant. Their statements were recorded and the Circle Officer sent proceedings to Tahasildar, Karvir, giving favourable remark in favour of complainant. It appears that this favourable remark was given without demanding any bribe amount because there is no such allegation about that. The mother and brother of complainant, however, raised objection to record the name of complainant only in the records of rights of those lands and hence, the proceeding was remanded to Circle Officer for recording statements of concerned parties. Complainant received letter dated 30th March 1995 to that effect.

3 It seems PW-1 went to Circle Office and met M.K. Chavan, accused no.1, who was working as Circle Officer at the relevant time. Accused no.1 told complainant (PW-1) that notices will have to be issued and all concerned parties will have to be summoned. Accordingly, PW-1 received notice on 31st August 1995 in connection with tenanted land and another notice dated 5th October 1995 in connection with ancestral land for recording his statement. Complainant went to the office of Circle Officer and his statements were recorded. Thereafter, accused no.1 asked complainant to come after 4 days after which, the matter will be referred to Tahasil office.

Accordingly, complainant met accused no.1 after 4 to 5 days. At that time, accused no.1 again asked complainant to come on some other day. PW-1 then met accused no.1 after 8 to 10 days at Kasaba Bawada Chavadi at which time accused no.1 informed PW-1 that he has to pay bribe of Rs.2000/- as two entries are to be effected, one in respect of ancestral land and another in respect of tenanted land. PW-1 informed accused no.1 that his financial position is weak and accused should reduce the amount. On 10th November 1995, PW-1 met accused no.1 at Kasaba Bawada Chavadi where accused no.1 asked whether he has brought the money. PW-1 requested accused no.1 to reduce the amount and finally accused no.1 agreed to accept Rs.1000/- and only on payment of that amount, he would send the papers for sanction to the higher authority. Therefore, PW-1 approached Anti Corruption Bureau and narrated his grievance to the Anti Corruption Officer. After the usual procedures, accused no.1 accepted the bribe amount of Rs.1000/- through accused no.2 on 15th November 1995, as a motive for reward for showing favour in the exercise of official function to the said complainant for the purpose of effecting mutation entry in his name for the ancestral land as well as tenanted land after the death of his father. Thereafter, raid was conducted and the Anti Corruption Officer - Mr. Vinayak Shivaram Tilekar filed complaint in Laxmipuri Police Station where the crime was registered against both the accused. After completion of investigation, papers were sent to Head Office of Anti Corruption Bureau at Pune for obtaining sanction from the Competent Authority. The Competent Authority

accorded sanction on 13th August 1996, after which the chargesheet was filed on 29th October 1996. The accused pleaded not guilty to any of the charges and claimed to be tried. The defence is of total denial.

4 To prove its charge, prosecution led evidence of four witnesses, viz., Pandit Bhausahab Ranadiwe, complainant as PW-1, Anandrao Devappa Kambale, a panch witness as PW-2, Gulab Abdul Gafur Mulla, who was working as Nayab Tahsildar as PW-3 and Manukumar Shrivastav, Sanctioning Authority as PW-4.

5 Interestingly and which is a main dent in the case of prosecution is that the Investigating Officer was never examined and the relevance of Section 114 of the Indian Evidence Act comes into play. Illustration (g) of Section 114 of the Indian Evidence Act, 1872 provides the Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. The fact that the Investigating Officer also has not been examined would show that if examined, his evidence would have been unfavourable to complainant. Non examining the Investigating Officer as a witness in the circumstances of the case would have caused grave prejudice to the accused. The Apex Court in ***Habeeb Mohammad V/s. The State of Hyderabad***¹ observed that it was the bounden duty of the prosecution to examine the Investigating Officer, who is a material witness in the case particularly when no allegation was made that if produced, he would not speak the truth and in any case, the Court would

1. AIR 1954 SC 51

have been well advised to exercise its discretionary powers to examine the witness.

6 Therefore, adverse inference arises against the prosecution's case from its non production of the Investigating Officer as a witness in view of illustration (g) to Section 114 of the Indian Evidence Act. The Investigating Officer is the principal architect and executor of the entire investigation. He is a crucial witness for purposes of establishing that there are omissions and contradictions but more importantly, it is always open to the defence to question the honesty and caliber of the entire process of investigation. It is well settled law that where an investigation is defective, insufficient or dishonest, those factors prove fatal to the prosecution. In the given instance, the accused was totally precluded from an opportunity of being able to establish the further infirmities in the prosecution's case and on this ground alone, the order of acquittal will have to be confirmed.

In the instant case, the Investigating Officer was a material witness to lend corroboration as to the pre-trap and from the moment the trap was executed. His non examination, thus, materially affects the case.

Though mere non examination of Investigating Officer does not in every case cause prejudice to the accused or affects the credibility of the prosecution's version, in the case at hand since Investigating Officer was the principal architect of the trap and execution thereof, it certainly causes prejudice to the accused and affects the credibility of prosecution's version.

7 This is a matter under the Prevention of Corruption Act where the entire procedure for pre-trap panchnama, the raid and post-trap panchnama is orchestrated by the Investigating Officer. He is effectively the sutradhar of the entire subject matter and if he is not examined, in my view, it will be fatal to the matter.

8 The Apex Court in ***Ghurey Lal Vs. State of U.P.***² 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.

2. (2008) 10 SCC 450

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. Vs. State of Karnataka***³ 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

3. (2014) 5 SCC 730

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 Vs. State of Gujarat***⁴ 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.

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.

10 In so far as the offence under Section 7 of PC Act is concerned, it is 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

4. 1996 SCC (cri) 972

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*⁵).

11 A learned single Judge of this court in *Khushalchand Yashwant Gaikwad V/s. The State of Maharashtra*⁶ also has held that it is well settled law that mere possession and recovery of currency notes without proof of demand will not bring home the offence under Section 7 since the demand of illegal gratification is *sine qua non* to constitute the offence. The same will also be conclusive in so far as offence under section 13 (1) (d) is concerned, as in the absence of any proof of demand of illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. It is only on the proof of acceptance of illegal gratification that presumption can be drawn under section 20 of the PC Act that such gratification was received for doing or forbearing to do any official act. Unless there is proof of demand of illegal gratification, proof of acceptance will not follow. Paragraph-12 of the said judgment reads as under :-

“It is well settled law that, mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7, since the demand of illegal gratification is sine-qua-non to constitute the said offence. The same also will be conclusive insofar as the offence under Section 13 (1)(d) is concerned as in the absence of any proof of demand for illegal gratification the use of corrupt or illegal means or abuse of position as to public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. It is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Prevention of Corruption Act that such gratification was

5. (2014) 13 SCC 55

6. 2018 SCC Online Bom. 1073

received for doing or forbearing to do any official act. Unless there is proof of demand of illegal gratification proof of acceptance will not follow. Reliance is placed on (i) N.Sunkanna v. State of Andhra Pradesh; (ii) T.K.Ramesh Kumar v. State through Police Inspector Bangalore; (iii) Khaleel Ahmed v. State of Karnataka; ((iv) Suraj Mal v. The State (Delhi Administration); and (v) Sita Ram v. The State of Rajasthan.”

12 Therefore, it is settled law that mere possession and recovery of currency notes without proof of demand will not bring home the offence under Section 7 since the demand of illegal gratification is *sine qua non* to constitute the offence.

13 Moreover, there are various contradictions in connection with the acceptance of money by accused no.2. PW-1 says that when the bribe amount was being given to accused no.2 at the instance of accused no.1, PW-2, panch witness, caught hold of the hands of accused no.2 when he was passing over that bribe amount to accused no.1. PW-2 has, however, deposed that the tainted money was accepted by accused no.2 from complainant and immediately, the members of raiding party rushed to the spot and he caught hold the hands of accused no.2. This is where the relevance of the evidence of the Investigating Officer comes into play.

14 It is the case of PW-1 that accused no.2 was sitting next to accused no.1 in the circle office. When PW-1 told accused no.1 that he has brought the bribe amount, accused no.1 and accused no.2 walked towards the door and called complainant outside and accused no.1 told complainant (PW-1) to hand over the bribe amount of Rs.1000/- to accused no.2 and when accused no.2 was handing over the money to accused no.1, the raiding

party came and caught hold the hands of accused no.2. I find this rather strange and not believable. I ask myself why would accused no.1 and accused no.2 go out together and accused no.1 will tell PW-1 to pay the bribe amount to accused no.2 and then accused no.2 will hand over that amount to accused no.1. Accused no.1 himself could have taken the money directly from PW-1. The prosecution made a suggestion that accused no.1 and accused no.2 were related and accused no.1 was the conduit for accepting the bribe amount. However, there is no evidence on record to indicate any such connection.

15 The other point which goes against the prosecution's case is the dishonest nature of PW-1 and therefore, his evidence is not reliable. Admittedly, the two plots of land, for which PW-1 wanted his names to be entered in place of his father, one as a tenant and the other as an owner, were actually belonging to the family. PW-1 did not want the names of the family members to be entered in the records as tenants/owners. His mother and brother had raised an objection and stated that their names alongwith the names of their 7 daughters/sisters should also be entered, to which PW-1 had objection. PW-3, in his cross examination, states that it is true that in all the statements of complainant his contention was that only his name should be entered as a tenant to the lands, whereas the statement of his brother Shamrao was that the names of all legal heirs should be recorded including sisters and mother. PW-3 also confirms that in the report of Mr. Burud, who was the earlier Circle Officer and even in the proceedings before accused

no.1, the contentions of complainant (PW-1) that only his name should be entered was not accepted. I wonder what could accused no.1 have done for PW-1 by accepting the bribe amount when there are objections from the other family members. The duty of the Circle Officer is only to make enquiry, record the statements and send the report to the Tahasildar. In this case, admittedly, there is an entry made by accused no.1 “not accepting the stand of PW-1”. Is he competent to make any entry in the records of rights in respect of agricultural land? The grievance of complainant that accused no.1 demanded bribe for effecting entries in the records of rights in his name to the tenanted land as well as ancestral land cannot be believed because that is the work of the Tahasildar and not the Circle Officer. It is not the grievance of complainant that accused no.1 demanded bribe for referring his case to Tahasildar or higher revenue authority. Considering the evidence of PW-3 that already in the year 1994 an enquiry was made and the second report was submitted by Mr. Burud, predecessor of accused no.1, reveals that there was no work that remained with accused no.1 for which he allegedly demanded bribe.

16 There are various other points raised by the Trial Court for passing its order of acquittal, which for the sake of brevity, I am not reproducing. Suffice to say, I concur with those observations.

17 There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to the

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 acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court observed that the prosecution had failed to prove its case.

18 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. I cannot find any fault with the judgment of the Trial Court.

19 Appeal dismissed.

20 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.

21 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.***⁷ in paragraphs 22, 23, 24 and 25 has stated as 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

7. (2014) 5 SCC 108

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.

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

(K.R. SHRIRAM, J.)