

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.435 OF 2004**

The State of Maharashtra)
At the instance of)
Anti Corruption Bureau, Kolhapur)Appellant

V/s.

Mohanrao Shankarrao Bhosale)
Age 50 years, R/o Radegaon,)
Taluka Kadegaon, District Sangli)Respondent

Mrs. Anamika Malhotra, APP for State
Mr. Shekhar Ingawale for Respondent

**CORAM : K.R.SHRIRAM, J.
DATED : 23rd NOVEMBER 2020**

ORAL JUDGMENT. :

1 This is an appeal impugning an order and judgment dated 31-10-2003 passed by Learned Special Judge, Kolhapur, acquitting respondent (the accused) Manoharrao Shankarrao Bhosale, for the offence 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 the Prevention of Corruption Act 1988.

2 It is settled law that prosecution has to prove the demand by the accused and also the fact of acceptance. I am not going into too many details because the fact that there was a demand before lodging a complaint to the ACB, itself has not been proved.

3. According to prosecution, the accused made first demand of illegal

gratification of Rs.2000/- on 4-6-2001. The accused has proved that he was on leave on that date. In fact, the accused has proved that he was on leave from 1-6-2001 to 4-6-2001. Learned APP in fairness states that the fact that the accused was on leave from 1-6-2001 to 4-6-2001 cannot be disputed. Therefore, on this ground alone, the appeal has to fail.

3 The other point which has been considered by the Trial Court was that there are three different versions as to how the checking was done after the raid for anthracene marks and how the darkness was created. Complainant-P.W.-1 states that window was closed, lights were switched off and darkness was created. P.W.-2 states that window was closed, lights were switched off and all the persons gathered forming a circle to create the darkness. I.O.-P.W.-4 states the black curtain was put to the window, window was closed and lights were switched off. Panch witness P.W.-2 also admits that by closing the window darkness cannot be created. It is also does not stated in the panchnama that all the persons gathered and formed a circle to create darkness. I.O. had made notes at the spot and then went to the ACB office to prepare panchnama. Those notes are, however, not produced alongwith the charge sheet, nor is it prosecution's case that notes got destroyed.

Even as to whether the accused was with complainant and panch witness went for the trap, there are contradictions. It is stated in the panchnama that the accused was in the room of DCF (Deputy Conservator of Forest) and there was a call by complainant from the room of DCF. But in the panchnama it is not stated that the accused was in the room of DCF and

from the room of DCF he was called.

4 Moreover, entire basis of complainant's case is that the accused demanded illegal gratification for issuing a pass to take away the fuel / jungle wood that he had purchased from one Bhau Patil. Bhau Patil should have been a material witness but he has not been examined. Even the DCF has not been examined. In fact, I.O. (PW.4) has admitted that the statement of DCF was not recorded initially but only after the directions by Director General, ACB Bombay, that the statement of DCF was recorded. But DCF was not called to testify. I.O. also admits in his cross-examination that before he acted on the complaint of P.W.-1, he did not even bother to check whether the accused was in fact in the office on 4-6-2001 when the first meeting with the accused is supposed to have taken place and the accused had demanded illegal gratification. I.O. also admits that the accused has no right to issue pass or to give directions to issue pass and those powers were with the DCF. It is the case of defence that papers regarding pass were sent to the office of DCF on 23-6-2001 itself but I.O. has not even bothered to check those records. I.O. does not even explain from where he brought black curtains to create darkness and he contradicts the panch witness who stated that darkness was created by gathering people and forming a circle. I.O. says that panchnama was prepared in the office of ACB, whereas panch witness PW.-2 states that panchnama was drawn at the spot and copy of the panchnama was given to the accused on the spot. This is a fatal blow to the prosecution's case because according to panch witness one panchnama has

been drawn on the spot and copy is given to the accused. I.O. states that after taking down notes all of them went to ACB office and prepared panchnama. There are many other such points raised in the impugned judgment which, for the sake of brevity, I am not delving into. I would hasten to add that I agree with the conclusions of the Trial Court.

5 The Apex Court in ***Ghurey Lal V/s. State of U.P.***¹ has formulated 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 Section 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:

¹(2008)10 SCC 450

- 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***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.

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.

6 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.

7 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.

³1996 SCC (cri) 972

8 Appeal dismissed.

9 The Government/Appropriate Authority shall pay over to respondent, within a period of 30 days from the date of receiving a copy of this order, 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 the accused and will factor in all promotions and increments that the 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.)