

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 358 OF 2007**

The State of Maharashtra

....Appellant
(Orig. Complainant)

V/s.

Karkala Venkatrai Pai
Age 59 years,
Occu. : Retired,
R/o. Mumbai

....Respondent
(Orig. Accused)

Ms. Anamika Malhotra, APP for State.
Mr. Indrajeet Joshi for Respondent.

**CORAM : K.R.SHRIRAM, J.
DATED : 21st DECEMBER 2020.**

ORAL JUDGMENT :

1. This is an appeal impugning an order and judgment dated 28th August, 2004 passed by the Special Judge, Kolhapur acquitting respondent (Herein after referred as accused) of offence punishable under Section 7 (*Public servant taking gratification other than legal remuneration in respect of an official act*), Section 13 (1) (d) r/w Section 13 (2) of the Prevention of Corruption Act, 1988.

2. It is the case of the prosecution that one Mahesh Mohanlal Kothari (PW. 1) resident of Pune was a scrap dealer and along with his friend one Santosh Jewarechand Sethia (PW. 4) was carrying on business in the name and style as "Siddhesh Traders". Siddhesh Traders used to buy

scrap from various parties including government offices. In the course of their business, they came across a notice inviting tender dated 04/08/2000 from Metal Scrap Trade Corporation Ltd. (hereinafter referred to as M.S.T.C.) which is a Government of India undertaking. Siddhesh Traders submitted its tender for Rs.4,31,000/- and the tender was accepted. Acceptance of the bid was conveyed by M.S.T.C. by an office order dated 14/09/2000 and Siddhesh Traders was directed to deposit a sum of Rs.4,96,943/- by way of demand draft with M.S.T.C. Upon making that payment M.S.T.C. issued a delivery order in favour of Siddhesh Traders on 29/09/2000.

3. To pick up the scrap, complainant P.W. 1, his friend Sethia P.W. 4 and nine labourers went to Kolhapur on 05/10/2000 to the place where materials were kept. There they meet one Assistant General Manager, Planning Mr. Kulkarni (who has not been examined) and after perusing papers submitted by them, Mr.Kulkarni orally granted permission to break the machinery as mentioned in the tender notice. The Department of Telecommunication had decided to scrap the A.C. Plant and other scrap articles. The work of breaking started immediately and thereafter P.W. 1 and P.W.4 went back to Pune. On 16/10/2000 P.W. 1 went to Kolhapur and met Mr. Kulkarni once again for permission to lift the broken scrap material. At that time Kulkarni told P.W.1 that the file was with Deputy General Manager Mr.Sanjay Choudhari and they should meet him. At that time on

16/10/2000 P.W. 1 complainant's supervisor, one Mr. Rajesh Tiwari who also has not been examined, accompanied P.W. 1. They both went to Mr.Choudhari who informed them that the file is with General Manager Mr.Koli. Therefore, on 17/10/2000, P.W. 1 and Mr. Tiwari went to meet Mr.Koli. But as they could not meet Mr. Koli they went back to Mr.Choudhari, who also has not been examined, and informed him that they could not meet Mr. Koli. Mr. Choudhari advised them to meet Internal Legal Adviser Mr.Pai - accused. Therefore, P.W. 1 and Mr. Tiwari went to meet accused at 6.00 p.m. on 17/10/2000 in his cabin and narrated the entire facts to accused. They requested accused to permit them to lift the scrap and move it to their godown. At that time, it is alleged that accused told P.W. 1 "Do you understand or not?" before lifting the material you have not paid the amount of 5% and unnecessarily you are visiting office for four to five days, you should have met me earlier. You come with Rs.20,000/- and I will give permission for lifting the scrap material. The complainant at that time told accused that they have already sustained loss in this transaction, nine labourers were sitting idle and therefore, they be permitted to lift the material soon. Thereupon, accused alleged to have told complainant to bring Rs.20,000/- and take permission or else their tender will be cancelled and complainant will have to face unnecessarily problems. When complainant requested accused to reduce the amount, accused reduced the amount to Rs.15,000/- and told the complainant to bring the amount at 3.00 p.m. on 20/10/2000. Accused also told complainant that unless the

amount is brought, his work will not be done.

As accused felt there was no other alternative, he approached the Anti Corruption Bureau, Kolhapur office on 20/10/2000 and lodged the complaint. Pre-trap formalities were completed and it was decided to trap accused on 20/10/2000 itself. It is the case of prosecution that the raiding team went to the office of accused situated at Telephone Bhuwan, Tarabai Park. When P.W. 1, P.W. 2 and P.W. 4 Sethia went to meet accused he was not available in his office as he was busy in a meeting and peon of accused asked them to wait outside and they were waiting. Within 15 minutes accused arrived. Complainant on seeing him greeted him and told accused that he had come to meet him. All three went inside the cabin of accused and sat in the chair in front of accused. Once again complainant asked accused for permission to lift the scrap. At that time accused asked complainant whether he has brought the amount and complainant answered in the affirmative. Thereafter, P.W. 1 complainant took out the marked currencies from the left side pocket of his shirt and held the same in front of accused. Accused, instead of taking it in his hand, told complainant to place the amount under one of the telephones that was on the table of accused. There were three telephones on the table and money was kept under the telephone which was in the middle. Accused then lifted middle telephone, the complainant place the money at the spot on the table and accused placed the telephone on top of the money. Thereafter the complainant went out saying he had to go to bathroom and went outside to

give signal. When the raiding party entered the cabin, P.W. 2 pointed out to P.W. 5 (Investigating Officer) that accused has placed money under the middle telephone. Hands of accused were checked and no sign of anthracene powder was found on the hands of accused. There were no sign of anthracene powder even on the dress or person of accused. The base of telephone instrument was checked under ultra-violet light and bluish shining was noticed under the telephone and on top of the glass on the table where the marked currencies were kept under telephone. Post trap panchanama was prepared. Investigation was commenced and after getting necessary sanction, charge-sheet was filed. Accused denied the charge and claimed to be tried.

4. According to accused he had put in 40 years and 8 months of service. He was very sincere and honest person and because of that he had become an impediment to others in the organization who have joined hands with P.W. 1 and P.W. 4 to trap him. Accused stated that purely due to his sincere and honest service he has been promoted from the post of clerk to the post of Director (Finance and Accounts). Defence also has raised that even the correct name of accused is not mentioned in the sanction order. The case of accused is that while he was busy in the meeting, P.W. 1, P.W. 2 Patil, panch witness and Sethia P.W. 4 were sitting in his cabin and taking advantage of his absence planted the marked currencies under the telephone without his knowledge.

5. To prove its charge, the prosecution led evidence of five witnesses, P.W. - 1 Mahesh Mohanlal Kothari, Complainant, P.W. - 2 Deepak Hanmantrao Patil, Panch Witness, P.W. - 3 Dharmpal Saini, Sanctioning Authority, P.W. - 4 Santosh Jawerchand Sethia, Scrap Dealer and P.W. - 5 Sudhir Ramchandra Chougule, Investigating Officer. The entire evidence is filled with contradictions. Even the sanction obtained is not valid.

6. P.W.1 says in his cross-examination that he is carrying business in the name of Siddhesh Traders but does not know the detailed address of Siddhesh Traders. He stated that he was partner of P.W. 4 but Siddhesh Traders is not a partnership firm but proprietary concern of P.W. 4. No document is produced to show his connection with Siddhesh Traders. In the testimony P.W. 1 says that he is taking work of Sethia and is paid percentage in the profit. But the complaint Exh.16 does not say this. In the complaint P.W. 1 says that he has been doing business of scrap material for one year in the name of Siddhesh Traders. He in fact even denies contents of the complaint and is also not able to tell the full form of M.S.T.C. He does not know whether Siddhesh Traders is Income Tax or Professional Tax payer. There is no documentary evidence to show that he was a partner of Siddhesh Traders. The tender document show that one Mr. J.B. Ubale has submitted tender in the name of Siddhesh Traders. Therefore, neither P.W. 1 or Sethia P.W. 4 have submitted tender in the name of Siddhesh Traders. P.W. 4 says that he is doing business of scrap dealing in the name of

Siddhesh Traders. P.W. 1, as also noted earlier, has stated the same thing that they are not partners. Therefore, the fact whether P.W. 1 and/or P.W. 4 are carrying on business in the name and style of Siddhesh Traders itself is a big question mark.

7. P.W. 1 says that the complaint was taken down by P.W. 5 in presence of the panchas. But the panch witness P.W. 2 denies that. P.W. 1 says that after he puts his signature on the entry register they went to the office of accused and enquired with the peon of accused whether accused was available and peon asked them to wait as accused was busy in meeting. This peon has not been examined. P.W. 1 does not say that they were asked to sit outside the cabin. As per map prepared by prosecution of the floor plan of the office of accused there is no arrangement for sitting outside. The evidence that has come out clearly shows that all the three, P.W. 1, P.W. 2 and P.W. 4 were sitting in the absence of accused inside cabin of accused. P.W. 1 also says accused asked him why he was come. Accused would not have asked him the said question of what prosecution says about demand by accused was correct or that accused had earlier met P.W. 1 and demanded amount of Rs.20,000/-. Moreover, it has come in the evidence that accused was not in a position to give permission to complainant for removing scrap material.

P.W. 4 has denied that there was sofa in the cabin of accused but the map floor plan/map submitted by prosecution indicates that there was

sofa in the cabin of accused. In fact, it has come in the evidence that three of them were sitting and waiting for arrival of accused inside cabin and therefore they had an opportunity to plant the marked currencies under the telephone. P.W. 4 says that when the Anti Corruption Bureau officers come inside office of accused, P.W. 2 told that the person sitting in the chair who is Pai has kept the amount under the telephone. But this has not been stated in the statement of P.W.4. In his cross-examination, P.W. 2 admits that when an enquiry was made by complainant with accused about file, accused stated that he is ignorant about the file and the General Manager can explain about the same. P.W. 2 also admits that his signature or signature of any panch witness were not taken on the file or the documents inside the file.

P.W. 2 says that while they were in the office of accused, accused complained about ill health but P.W. 5 Investigating Officer says ill health happened when they were in the office of Anti Corruption Bureau while preparing the post trap panchanama.

8. P.W.4 says part of the panchanama was written in the office of accused and part in the office of Anti Corruption Bureau but that is different from the version of P.W. 1 complainant and the Investigating Officer P.W. 5. P.W. 4 also admits in his statement the words attributed to accused “Maine Bataya Usaka Kya Kiya?” is absent. P.W. 4 also admits that in his statement it is not mentioned that after raiding party come in the cabin of accused,

Investigating Officer did not make enquiry about money but he told the Investigating Officer that money is under telephone. P.W. 4 also admits that before he went to the office of accused for the trap he did not even know the name of accused. Therefore, to that extent what is stated in the panchanama is false.

9. As far as P.W. 5 Investigating Officer is concerned, he says, he asked accused about the amount which was taken from P.W.1 and accused told him that amount is kept under the middle telephone of the three telephones on the table. But the panch witness P.W. 2 says that when the raiding party came in he told P.W. 5 that the amount is kept under the telephone. P.W.5 says when there was interference and obstacle by the superior officers and other employees in the office of accused therefore they went to the Anti Corruption Bureau office along with accused and post trap panchanama was prepared in Anti Corruption Bureau office. But this is not what is stated by P.W. 2 panch witness. P.W. 5 says the statement of both panch witness post trap was recorded in the office of Anti Corruption Bureau. But panch witness P.W. 2 says that after trap he never went to the office of Anti Corruption Bureau. P.W. 5 admits that as per file that was seized from the office of M.S.T.C after the trap was effected, it mentions that the file was sent on 09/10/2000 to the General Manager and there are entries to that effect in the file. I must add, after the raid, the file was brought from the office of the General Manager and taken into custody by

the Investigating Officer. There are notings in the file that the General Manager has also sent the file to Assistant General Manager to complete all the formalities on 18/10/2000. So there was nothing to be done by accused and therefore question of any demand and acceptance by accused does not arise. What is more relevant in that file was not sent along with the charge-sheet. In the file there is a letter sent by Assistant General Manager, Planning to Siddhesh Traders on 06/10/2000 granting permission to Siddhesh Traders to lift the scrap material. When the permission has already been granted one wonders why should accused have given permission once again to lift the material. As noted earlier the tender is in the name of Siddhesh Traders submitted by Mr. J.B. Ubale. Mr. J.B. Ubale has not given any evidence.

10. The Investigating Officer admits that he has not made any enquiry or investigation regarding the actual role of P.W. 1 and P.W. 4 in Siddhesh Traders when one J.B. Ubale has submitted the tender in the name of Siddhesh Traders. The Investigating Officer admits that he received a reply from the Telecommunication Department on 25/09/2001 by which the designation of accused is referred to as D.F.A./I.F.A. and he was informed that accused has no power to issue letter giving permission to lift the scrap. This letter was not produced in the court nor was it sent to the sanctioning authority because if the letter was only sent it would have become clear to the sanctioning authority that accused could not have granted any sanction

to lift the scrap material and would have doubted the allegations against accused. There are many such contradictions narrated by the trial Court in this judgment which for the sake of brevity I am not reproducing. Suffice to state I agree with these observations of the trial court.

11. As regards the sanction, P.W. 3, sanctioning officer, has stated that the person who could remove accused was the President of India and relies on notification to state that he had powers to authenticate the orders of the authority. P.W. 3 says as the President of India is the competent authority to remove accused from service, Government of India has framed rules. According to him, procedure is that notices are put up by various authorities and the Minister grants the permission based on the notice put up. All the papers are confidential and cannot be produced. P.W.3 says the papers were sent to Minister of Department of Telecommunication and the Minister has granted permission to prosecute accused and then P.W. 3 signs the sanction order. P.W. 3 says the concerned Minister has power to sanction on behalf of the President of India as per rules. P.W. 3 had not brought any of the papers with him of the sanction order. According to him, he had difficulty because except the sanction order rest of the papers are confidential. But he is unable to explain why they were confidential. He also says that he has not called for the service record back and he has no idea about the service record of the accused. He further admits that he has not received any file concerning the incident and without going through the

file sanction was accorded. According to PW. 3 at the time of trap, the file about lifting the scrap was with accused but as noted above the file was with the General Manager. One thing is clear the sanctioning authority has not applied his mind.

12. On the issue of sanction as submitted by Mr. Joshi, I am in agreement with him. This is because the validity of sanction depends on the application of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation. It necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction, where prosecution has to be sanctioned or not. The sanctioning authority, since has a discretion to grant or not to grant the sanction, cannot rely on advise from anybody else because, as held in ***Mansukhlal Vs. State of Gujarat***¹, its discretion should be shown to have not been affected by any extraneous consideration, nor should the sanctioning authority be under pressure from any quarter, nor should any external affairs be acting upon it to take the decision one way or the other. For example, if any one seeks legal adviser's advise and he advises that sanction ought to be given, the sanctioning authority will be under pressure to grant the sanction. The sanctioning authority will find it absolutely difficult to go against legal advise and refuse the sanction. It is, therefore, necessary that the discretion to grant or not to grant the sanction,

1. 1997 (7) SCC 622

should be vested purely and absolutely in the sanctioning authority. The sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction where prosecution has to be sanctioned or not.

13. In the circumstances, the sanction accorded in this case, will have to be invalid. It would not assist the sanctioning authority to say that even he has applied his mind independently.

14. Therefore, there is no valid previous sanction. The Learned Single Judge of this Court in *Laxman through the legal heirs and another vs. State of Maharashtra*² relying upon *Nanjappa Vs. State of Karnataka*³ observed, in that case time of 20 years had lapsed as the incident in that case happened in March 1999, that no purpose could be achieved by directing a fresh trial. In this case also the incident happened in October 2000, 20 years ago.

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

2. 2019 SCC Online Bom 1020

3 (2015) 14 Supreme Court Cases 186

4. (2008) 10 SCC 450

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:

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

5 (2014) 5 SCC 730

6 1996 SCC (cri) 972

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.

16. 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 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).

17. I have perused the impugned judgment, considered the evidence and also heard Ms. Malhotra, learned APP and Mr. Joshi. 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

⁷ (2014) 13 SCC 55

suffered ignominy of allegations and trial. They need not go through that again.

18. In the circumstances, Appeal is dismissed.

19. 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.)