

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1342 OF 2004

The State of Maharashtra

)....Appellant

(Org.Complainant)

V/s.

Badrinarayan Nandkishore Ladda

)

Age-31 years, Occ. Contractor

)

R/o 1135(B), Maruti Road, Sangli

)....Respondent

(Org.Accused)

Mrs.Anamika Malhotra APP for State.

Ms.Tanvi Tapkire i/by Mr.Umesh Mankapure for respondent.

CORAM : K.R.SHRIRAM,J

DATE : 2.11.2020

ORAL JUDGMENT :-

1. This is an appeal impugning an order and judgment dated 2.8.2004 passed by the Chief Judicial Magistrate, Kolhapur acquitting respondent accused of offences punishable under Sections 406 (*Punishment for criminal breach of trust*) and 407 (*Criminal breach of trust by carrier etc.*) of the Indian Penal Code.

2. Heard Mrs. Malhotra, learned APP and Ms.Tapkire for respondent and also considered the evidence, records & proceedings

and impugned judgment. I find no reason to interfere with the impugned judgment.

3. It is prosecution's case that accused was appointed as a distribution Contractor by the Collector of Chandgad, Kolhapur to supply rice under Mid-Day Meal Scheme for the period June-1998 to March-1999. Under this scheme, which was part of national programme for nutrition support education scheme, block education officer was sanctioning demand of rice to the supply department, Tehsil, Chandgad, Kolhapur. Based on the demand received, communication was sent to District Supply office and an order to collect the rice was to be issued to accused from Food Corporation of India (FCI) Godown, Kolhapur. Scope of work of accused was to distribute rice in 207 primary schools in Kolhapur district. Accused was to collect the rice, bag them in 3 kg. bags and distribute in schools. It is prosecution's case that accused supplied rice to the schools upto October-1998 and for the remaining period, though he took rice from FCI Godown in Kolhapur and Miraj, accused did not supply the same to the schools. Instead accused had diverted the rice to local markets at Kolhapur and sold it to several traders in Kolhapur city. Thus, the charge was, accused was entrusted with rice for distribution in 217 schools in Chandgad but sold the same in local

markets to several traders and pocketed the sale proceeds. According to prosecution the accused was entrusted with the property, i.e., rice, had dominion over it, misused his dominion and misappropriated the rice for his own advantage dishonestly.

4. To bring home the guilt, prosecution examined 17 witnesses. The 17 witnesses comprised of officials of the collectorate, officials from Panchayat Samiti, Chandgad, head master of school and receivers of misappropriated rice from accused.

5. PW-1 Vijay Govind Dani was the complainant. Defence had even challenged his authority to lodge the complaint which has not been accepted. I would concur with the trial Court.

6. One more point which the defence raised was that there was no contract in favour of accused and that also has not been accepted by the trial Court. On that issue also I would agree with the trial Court.

7. Learned APP submitted that the contract having been proved would partly show the guilt of accused. I would not agree with the learned APP.

8. The trial Court has written an elaborate judgment which, for the sake of brevity, I would not go into every point. Only some of the points need to be highlighted.

9. From the evidence and cross-examination of PW-1, the complainant, one thing is very clear, i.e., he has not, prior to filing the complaint, collected all information or gone through all papers, correspondence and record of the case. The complainant was not able to tell how much rice was supplied to accused and how much rice was supplied by accused to the respective schools under the scheme. PW-1 has not verified even the records of the Panchayat Samiti or District Supply Office of Kolhapur. It appears that case was filed based on presumption. Prosecution gave lot of weightage to the evidence of PW-4 Dattatray Ramchandra Komne. PW-4 has narrated the procedure followed for accepting the tenders of accused. The agreement at Exh.85 which is the contract given to accused has a clause where it says if any breach is committed by the contractor, then the deposit given by the contractor will be forfeited. Strangely, neither the contract has been terminated nor the deposit forfeited even though the officers had knowledge as alleged that accused was not distributing rice since November-1998 till March-1999. PW-14

Sarojini Shirane, the clerk in the supply department of Collector's office, Kolhapur, has even gone to the extent of saying that she had put some notes regarding action against accused regarding non supply of rice but none of the Superiors has taken any action. PW-4 Dattatray Komne and PW-14-Sarogini Shirane who were from the supply department in the Collector's office have stated that District Supply office had forwarded utilization report from November-1998 to November-1999 to FCI, Pune and FCI, Pune, after satisfying itself and considering the utilization report, had released the rice for that period. It is prosecution's case that the rice was not supplied by accused from November-1998 to March-1999 but sending utilization report for November-1998 to March-1999 would mean the accused had distributed rice to the 217 schools. If the rice had not been distributed, why would Education Officer, District Supply officer and Additional Collector, send utilization report to FCI Pune for those periods. It is not prosecution's case that false utilization reports were sent to FCI Pune.

10. PW-14 in her cross-examination states that 2 statements at Exh.175 and 176 were prepared by her with an intention to help the Investigating officer after filing of the complaint. It would mean that those documents were prepared later to help the police and before

that District Supply officer was not having any concrete proof regarding non-supply of rice or alleged misappropriation of rice.

11. PW-2 Jaysing Sakharam Patil and PW-3 Pandit Vasudeo Bille are those who have issued the transport passes. PW-2 has admitted that none of the transport passes bear Signature of accused or his representative. Some of the transport passes look like they have been signed by drivers but those are very faint and not readable whereas other transport passes do not even bear signature of driver. These documents do not contain signature of drivers of trucks which is alleged to have received the rice for distribution. It is very difficult to accept that these transport passes were issued to accused while collecting rice from FCI godown. PW-3 has also admitted that full name and full address of any driver is not mentioned in the passes. PW-2 & PW-3 do not even state prior to issuing transport passes they have any authority letter of the driver or authorised agent of accused.

12. The major dent in prosecution's case is the Investigating officer who states that he has not recorded the statement of any officer of FCI godown or the godown keeper or the labourers working in the godown regarding handing over of possession of rice to accused at any point of time. Even the stock register or register of goods maintained

has not been seized. Unless the statement of godown keeper or documents in possession of the godown keeper has been taken, how can somebody throw light on the fact regarding actual delivery of rice for the period November-1998 to March-1999 to accused or his representative. In fact, the investigating officer has fairly admitted that it was necessary for him and it was important to record statement of officers of FCI godown and also seize relevant registers.

PW-4 states no article will go from or come into godown without making entries at 3/4 places. PW-2 says that while giving delivery, entries at 4/5 places will be made and without checking, the supply will not be made. PW-2 also states that all documents should tally with each other and only after tallying of the documents delivery will be completed but these documents where 4/5 entries have to be made, have not been produced on record.

PW-5 Namdeo Shankar Mali who was a clerk in the office of education office admits that his office had sent utilization reports of the rice supplied by accused upto March-1999. This would show accused had actually distributed the rice. I ask myself if that was not the case, why were the utilization reports upto March-1999 sent.

13. The prosecution has examined some headmasters of some schools, i.e., PW-10 Bhairu Malavkar, PW-11 Bhairu Khandekar, PW-

12 Sanjay Bambudage and PW-13 Pandurang Mulik. Statement regarding receipt and non-receipt of rice of their schools have been prepared by these headmasters and are at Exh.155, 157, 171 and 173. These statements indicate that rice for the period November-1998 to March-1999 has not been received. This would go against the utilization reports sent by Block Education officer. At the same time, these headmasters were withdrawing additional remuneration in respect of work done by them for the scheme upto March-1999. If according to their statements, rice was not received upto March-1999, then on what ground they were withdrawing the additional remuneration. No explanation has been given. Therefore, the statements of these witnesses also cannot be relied upon.

14. Investigating officer has not recorded statements of truck drivers or owners through which alleged rice was transported. The documents from RTO office have not been produced. Investigating officer Anil Dabde PW-16 concedes that there are no documents on record to show that the truck which lifted the rice from FCI godown from November-1998 to March-1999 actually belonged to accused or was hired by accused. PW-16 also stated that none of the witnesses has stated that the possession of rice was actually given to accused. Even the Investigating officer has not placed any document to show

that accused had authorized any person as his representative for collecting the rice. Under these circumstances, prosecution has failed to prove that rice of about 2403 quintals was entrusted with accused.

15. Learned APP relying upon the evidence of PW-15 Rajesh Sabne submitted that accused sold the rice through PW-15 to various traders. Whether evidence of PW-15 is reliable is the point which has to be considered. PW-15 Rajesh Sabne has been involved in case of misappropriation of rice with others including Additional Collector and other Revenue officers. Criminal cases were pending against Mr. Sabne. He is involved in criminal cases for misappropriation of rice. Therefore, I would not consider PW-15 as a trustworthy witness. There is nothing even to indicate what brand or what type or brand of rice was purchased by the traders from Mr. Sabne or whether the rice was actually supplied from FCI godown. It was the duty of the Investigating officer to link the rice sold to the traders, seize the documents and prove that the rice purchased by those traders, viz., PW-6 Rajendra Shetye, PW-7 Balwant Patel and PW-8 Irfan Abdul Gaffar Akbani were actually purchased by them from accused through PW-15.

16. The evidence does not indicate that possession of rice was given to accused or his authorized agent; utilization reports between June-1998 to March-1999 that were forwarded to FCI shows rice was properly distributed; Investigating officer has not seized documents from the custody of officer of FCI or even recorded their statements to prove beyond reasonable doubt that the rice in question was entrusted with accused.

I would say that the whole case smacks of a scandal where many people are involved.

17. The Apex Court in ***Ghurey Lal Vs. 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

¹ (2008) 10 SCC 450

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. Vs. 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 Vs. 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

² (2014) 5 SCC 730

³ 1996 SCC (cri) 972

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.

18. In the circumstances, appeal is dismissed.

(K.R.SHRIRAM,J)