

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.12 OF 2005

The State of Maharashtra	)....Appellant (Org.Complainant)
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V/s.

Anant Dattatraya Pashilkar	)
Age about 57 years, Class I Officer,	)
Assistant Registrar, Co-operative Society,	)
Roha, R/a Bhuvaneshwar, Tal. Roha	)
Dist. Raigad	)....Respondent (Org.Accused)

Ms.Pallavi Dabholkar APP for appellant.
Mr.Rohan Savant for respondent.

CORAM: K.R.SHRIRAM,J
DATE : 5.3.2020

ORAL JUDGMENT :-

1. This is an appeal impugning an order and judgment dated 29.9.2004 passed by the Special Judge (P.C Act) Raigad, acquitting respondent (accused) of offences punishable under Sections 7 (*Offence relating to public servant being bribed*), 13(1)(d) and 13(2) (*Criminal misconduct by a public servant*) of Prevention of Corruption Act 1988.

2. As nobody was representing respondent, this Court by an

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This order has been modified by speaking to the minutes of the order dated 22nd January 2021.

order dated 4.3.2020 appointed Mr.Rohan Savant as counsel to represent respondent. Before I proceed with the case, I must express my appreciation for the assistance rendered and endeavour put forth by Mr.Rohan Savant.

3. Complainant is the secretary of Roha Taluka Krishi Audyogik Shetkari Sahakari Kharedi Vikri Sangh Ltd., Roha (Sangh). Accused at the relevant time was working as class-I Cooperative officer in the office of Assistant Registrar Co-operative societies, Roha. Accused sent an intimation in writing to the Secretary of the sangh about the proposed audit of the accounts of the sangh on 20.4.2001.

4. Accused inspected the account, books, registers etc. of the sangh on 20.4.2001 and he came across lot of irregularities and discrepancies. Drawings were shown against the directors with no approvals of corresponding entries. Therefore, accused informed the secretary of the society Gopinath Harischandra Devale (PW-1) about the irregularities and also demanded Rs.1000/- as bribe for giving a favourable report. Therefore, Gopinath Devale went and discussed with his Chairman Vithal Tukaram Deshmukh who has not been examined since the amount of bribe could be paid only with the approval of the chairman. On 23.4.2001 PW-1 approached the office
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of Anti Corruption Bureau, Alibag where his complaint was reduced into writing by Arun Bhosale, Dy.S.P. (I.O) PW-6. A trap was arranged and pre trap panchanama was prepared. 28.4.2001 was the date fixed for the raid and on that date bribe amount was given to the accused in the Verandah behind the cabin of accused that led to the toilet. Accused was caught red handed and anthracine mark was found in his left hand fingers and left side trouser pocket. Later, post trap panchanama was prepared. Investigation was carried out. Statements were recorded and after obtaining sanction from the sanctioning authority-dhanraj Koche (PW-2), complaint was filed and charge was recorded.

5. Accused pleaded not guilty and claimed to be tried. It is the case of defence that there has been previous enmity between complainant and accused because accused was appointed as Administrator in some other Co-operative Rice Mill of which complainant was a director and complainant was not holding election in accordance with law. It is also the case of defence that while accused was in the urinal, complainant came and pushed the tainted currency in to the left side pocket of his pant.

6. Mr.Savant submitted that the onus is on prosecution to
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prove the guilt of accused beyond reasonable doubt, but even in situation where there are legal presumptions, the onus of accused is only to explain on the basis of preponderance of probabilities. Mr.Savant relied upon ***V Sejappa V/s. State by Police Inspector Lokayukta, Chitradurga***¹, where the Court was considering the presumption under Section 20, when it arises and what was the duty of court while invoking the provisions of Section 20. The Court after observing that the proof of demand is *sine-qua-non* for considering the offence under Section 7 of PC Act, held that initially burden of proving that accused accepted or obtained the amount other than legal remuneration is upon prosecution. It is only when such initial burden regarding demand and acceptance of illegal gratification is successfully discharged by prosecution, then burden of proving the defence shifts upon accused and a presumption would arise under Section 20 of PC Act.

Mr.Savant also submitted that if the evaluation of the evidence and the findings recorded by the Trial Court do not suffer from any illegality or perversity and the grounds on which the Trial Court has based its conclusion are reasonable and plausible, the High Court should not disturb the order of acquittal if another view is possible and the view taken by the Trial Court also is possible, the

¹. (2016) 12 Supreme Court Cases 150
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Appellate Court should not interfere.

7. In *State of Gujarat V/s. Navinbhai Chandrakant Joshi & Ors.*² the Apex Court held that the presumption under Section 20 of PC Act is rebuttable presumption, and that the burden placed on the accused for rebutting the presumption is one of preponderance of probabilities. Paragraph 11 of the said judgment reads as under:

“11. So far as the presumption raised under Section 20 of the Act for the offence under Section 7 of the Act is concerned, it is settled law that the presumption raised under Section 20 of the Act is a rebuttable presumption, and that the burden placed on the appellant for rebutting the presumption is one of preponderance of probabilities. In C.M. Girish Babu Vs. CBI Cochin, High Court of Kerala (2009) 3 SCC 779, this Court held as under:-

“21. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accuse charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence.....

22. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt...”

Since it is established that the accused was possessing the bribe money, it was for them to explain that how the bribe money has been received by them and if he fails to offer any satisfactory explanation, it will be presumed that he has accepted the bribe.”

8. I have considered the evidence, records and proceedings, impugned judgment and also heard learned APP and Mr.Sawant for respondent. I see no reason why the judgment impugned should be

2. (2018) 9 Supreme Court Cases 242
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interfered with.

9. The trial Court has acquitted accused based on the evidence which shows that there was previous enmity between complainant and accused. It has also come in evidence that complainant, V.T.Deshmukh Chairman of the sangh who has not been examined and Arun Bhosale-Investigating officer (PW-4) had met on 21.4.2001, but there is no explanation as to why on that date the complaint was not recorded. It has also come on record that there were various discrepancies and irregularities in the accounts of the sangh. It has also come on record that PW-1 complainant was the director of Chanera Co-operative Rice Mill prior to 2001. The term of PW-1 had expired on 13.11.1999 but PW-1 did not hold election of the said Cooperative Rice Mill. PW-1 also admits that accused had made a report against PW-1 for not holding election even after the expiry of the term and for not holding election, Administrator was appointed and the Chief Administrator so appointed was accused himself. PW-1 also admits that appointment of accused was challenged by him and his party by way of writ petition in the High Court, where again PW-1 failed. PW-1 also did not hesitate to admit that in spite of appointment of Administrator he and his party men were not ready to hand over the records of Rice Mill to the Administrator and Roha KJ

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police was therefore, required to interfere with. It has come on record that in April-2001 the Peasants and Workers party of which PW-1 was a member, was part of the coalition in power in the state government with two sitting MLAs and a minister.

10. In the cross-examination, PW-1 also admits that election of co-operative Rice Mill was held on 28.3.2001 under the control and supervision of accused, as per the bye laws of the Rice Mill it was necessary to hold election to the post of director after every 3 years and it was next to impossible for PW-1 to win the election. PW-1 also admits that he and his party lost those elections and Election petition was filed by his sister-in-law and accused was one of the respondent and accused was resisting the election petition.

11. PW-1 also admits that the record of the sangh was verified by accused on 3 to 4 earlier occasions but on those occasions accused never made any demand or even sought a cup of tea as a favour. PW-1 admits that Chairman V.T Deshmukh had been in the office of the sangh on 28.4.2001 and further admits that entries in Bhatta register were not proper. Payments to directors have been shown in the register but signatures were not forthcoming.

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12. Therefore, the whole thing appears to be a case of a deliberate attempt to malign accused who stood against politically powerful people.

13. The sanctioning authority PW-2 admits that there were circulars which provided for time limit within which a sanction has to be accorded and he had not complied with the time limit prescribed. PW-2 also states in his cross-examination that he was not sure whether due consideration was given to the circular while granting sanction and the sanction letter does not refer to documents relied upon while granting the sanction. In fact, PW-2 says he was not even aware that there was a time limit for submitting the requisite papers to the sanctioning authority, i.e., himself.

14. PW-3 the panch witness who was working for the public works department with PW-2 states in his evidence that his superior officer told him that in order to avoid wrath of the anti corruption bureau department, it was necessary to extend help and to co-operate with them and accordingly he was directed by his superior to attend the office of Anti Corruption Bureau. Therefore, the trial Court is correct in observing that the evidence of PW-3 cannot be safely relied upon because PW-3 himself was under the fear of failure and effects of KJ

failure of trap.

15. PW-4 also admits that the last date of submitting final report was 24.7.2001 but in view of certain queries raised from his head office, he was required to submit it again on 29.10.2001 but he gave the final report on 1.12.2001 to PW-2 the sanctioning authority.

16. There are many other points which have been raised in the trial Court's judgment which I am not reproducing for the sake of brevity and I hasten to add that those observations of the trial Court has the approval of this Court.

17. PW-4 also admits that the bribe amount allegedly was given for obtaining favourable report for the sangh but such report has not been obtained for the sangh.

18. All these raises a doubt and suspicion on the fact of demand of bribe and acceptance of bribe. No independent witnesses have also been examined. In view of this background, the theory that bribe amount was thrust in the pocket of accused passes the test of preponderance of probability. The onus is on the prosecution to prove beyond reasonable doubt the demand of bribe amount of Rs.1000/-
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and acceptance of the said amount and the seizure of the said amount from accused as gratification other than his legal remuneration. Prosecution has miserably failed.

19. The Apex Court in ***Chandrappa & Ors. V/s. State of Karnataka***³ in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal. Paragraph 42 reads as under :

“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the the accused. Firstly, the presumption of innocence available to him under the fundamental principle of

³ (2007) 4 SCC 415
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criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

20. Appeal is dismissed with the observation that the prosecution has failed to prove the guilt of accused beyond reasonable doubt..

21. The Government/Appropriate Authority shall pay over to respondent no.1 Anant Dattatraya Pashilkar, 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.

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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.

22. Since the accused has not appeared, registry to forward free of costs an authenticated copy to accused at the address given in the cause title.

(K.R.SHRIRAM,J)

Gauri A.
Gaekwad

Digitally signed
by Gauri A.
Gaekwad
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