IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.36 OF 2005

The State of Maharashtra ....Appellant/Complainant

V/s.

Hanumant Dattatray Dhumal,
Age about 53 yrs., Occ.: Service,
R/o. 24, Saraswati Society,
Shahupuri, Satara, District : Satara .....Respondent/accused

Mrs. Anamika Malhotra, APP for State – Appellant.
None for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 6th NOVEMBER 2020

ORAL JUDGMENT :

1 This is an appeal filed by the State impugning an order and judgment dated 1st October 2004 passed by the Special Judge, Baramati, acquitting respondent (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) read with Section 13 (2) of Prevention of Corruption Act, 1988 (PC Act).

2 Complainant - Devendra Harihar started business of bicycle repair shop in a gala in Gurukupa Complex in Baramati. In October 2002, complainant applied for a loan of Rs.25,000/- to the Maharashtra State Khadi Gram Udyog (MSKGU) for his business and the same was sanctioned. On 9th December 2002, complainant got the 1st installment of Rs.12,500/- of his sanctioned loan amount. Complainant got the said cheque of Rs.12,500/- from respondent, who was working as a Secretary with MSKGU. It is the case

of complainant that, when he enquired about the balance amount of Rs.12,500/-, respondent told him that the same would be issued to him in a month or two. Accordingly, on 21st February 2003, complainant met respondent and enquired about the balance amount of Rs.12,500/-. On enquiry, respondent demanded an amount of Rs.500/- as bribe to release the cheque of the balance amount. Finally, complainant paid respondent Rs.200/-. In order to help complainant, respondent told complainant that instead of giving the cheque, he would encash the same and will give him the cash of Rs.12,500/-. On 26th February 2003, complainant again met respondent and asked the balance amount of loan, when respondent demanded balance bribe amount of Rs.300/-. Thereafter, on 26th February 2003, complainant lodged complaint with A.C.B., Pune.

3 The First Information Report (FIR) vide CR No.06 of 2007 for the offences punishable under Section 7, 13(1)(d), 13(2) of the PC Act came to be lodged after conducting full fledged preliminary inquiry in the matter by the Anti Corruption Bureau and consequently, accused came to be charge-sheeted and the charges came to be framed by the Trial Court.

4 In order to bring home the guilt of accused, prosecution has examined three witnesses, viz., Devendra Harihar, complainant as PW-1, Dattatray More, the shadow Pancha as PW-2 and Dilip Laxman Mane, the Investigating Officer as PW-3.

5 I have heard Mrs. Malhotra, the learned APP for the State. Mrs. Malhotra took me through the entire evidence and submitted that the order of acquittal needs to be set aside mainly on the ground that based on the evidence the learned Special Judge in paragraph 11 of the judgment has rightly arrived at a conclusion that accused was giving money to the beneficiaries for obtaining loan and was collecting a certain amount after sanction and disbursement of the loan to the beneficiary and held accused guilty for misconduct within the meaning of Maharashtra Civil Services Rules. This indicates that accused was demanding bribe and accepting the same in the guise of helping people seeking loan. Mrs. Malhotra further contended that the Trial Court held it to be a fit case to hold enquiry against accused for the said misconduct, which indicates that the evidence as available on record satisfies the requirement to prove the guilt of accused. Mrs. Malhotra further contended that the Trial Court has also taken action against complainant under Section 344 of the Code of Criminal Procedure for giving false evidence and took cognizance of the said offence punishable under Section 193 of IPC which means that the evidence of complainant needs to be discarded. In this background Mrs. Malhotra submitted that the order of acquittal is not proper as the other two witnesses are corroborating each other and even if the evidence of PW-1 is discarded, accused can still be convicted on the basis of the evidence of PW-2 and PW-3.

6 I have carefully considered the contentions of Mrs. Malhotra and perused the records and proceedings of the case.

7 PW-1, complainant, in his examination-in-chief, has stated that at the time of trap, accused collected the bribe amount with his right hand and kept the same in his shirt pocket. PW-1 further stated that PW-3, Mane, the Investigating Officer, took out the said currency notes from the pocket of accused. On the other hand PW-2, in his examination-in-chief, has stated that accused collected the said amount from PW-1 and kept it on the left side of the table and the same was recovered from the table by the other pancha Gavade on the instructions of PW-3. PW-3, with respect to the same, stated in his examination-in-chief that accused took the said amount with his right hand and kept the same on the table towards left side as narrated by PW-2. PW-3, the Investigating Officer, in corroboration with PW-2, stated that the amount of bribe was lying on the table and the same was collected by the other pancha Gavade from the table. This being a major discrepancy in the statements of the complainant on one hand and the pancha and Investigating Officer on the other hand, with respect to the recovery of the bribe amount, is a fatal blow to the prosecution.

8 PW-1, complainant, in his cross examination admitted that he had borrowed an amount of Rs.300/- from accused before he submitted the proposal for collection of papers, forms and affidavits. PW-1 also admitted that an amount of Rs.30/- was incurred by Shri Ketkar (a colleague of accused who was not examined) for purchase of stamp and papers for his proposal. PW-1 further admitted that while he had been to accused after receipt of 1st installment, accused had asked him to pay amount towards

purchase of shares and Rs.330/- as incurred by accused and Shri Ketkar towards his loan proposal. PW-1 further admitted that when he met accused after a period of one and half months, accused informed that the cheque was ready and he was required to pay Rs.630/- towards share capital and the expenses incurred by accused and Shri Ketkar towards the loan proposal. PW-1 further admitted that he was sure that accused would not give the cheque of Rs.12,500/- unless he repaid the amount of Rs.300/- incurred by accused for the loan proposal. The above vital admissions given by complainant in his cross examination completely destroys the case of prosecution so far as demand of bribe is concerned. The above admissions indicates that complainant owed an amount of Rs.330/- to accused towards the expenses incurred by him. The version of complainant seems to be doubtful and he is not at all reliable witness and hence, the evidence of complainant needs to be discarded as not trustworthy.

9 In the 313 statement of accused, in his response to question no.90, the defence taken by accused is that he had given a cheque of Rs.12,500/- to complainant and informed him that the proposal of his wife for loan for sewing machine could not be sanctioned due to which complainant got annoyed and lodged a false complaint against him.

10 Even though the evidence of PW-2 and PW-3 corroborates each other with respect to acceptance and recovery but with respect to demand, PW-2 in his chief examination states that accused demanded remaining amount of Rs.300/- from complainant and the same was given to him by

PW-1. Though this indicates accused has demanded some money from complainant, the same seems to be the reimbursement of cost incurred or share money and not the bribe amount. PW-2 never spelt out the word like bribe amount as demanded by accused.

11 The twin factors required to be proved in a case under Section 7 and 13(1)(d) of the PC Act, is demand and acceptance. Mere recovery is not enough to prove a case of trap. With respect to demand, the admissions given by PW-1 complainant, in his cross examination as discussed above, completely destroys the case of the prosecution. With respect to the acceptance and recovery of the amount, the version of PW-1 is totally different from the version of PW-2 and PW-3 and hence becomes doubtful. Hence, I do not hesitate to hold that the prosecution has miserably failed to prove the case beyond reasonable doubt.

12 I do not find any reason to interfere with the order of acquittal as discussed above. I do not agree with the finding of the Trial Court in paragraph 11 of the impugned judgment, but I do not wish to interfere with the same as those observations are not in challenge before this Court.

13 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*

1. (2008) 10 SCC 450

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***[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

2. (2014) 5 SCC 730
3. 1996 SCC (cri) 972

conclusions.

14 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.

15 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.

16 Appeal dismissed.

17 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.

I wish to clarify that this is on the basis that no action has been taken against accused based on the observations made in paragraph 11 of the impugned judgment.

(K.R. SHRIRAM, J.)