

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.532 OF 2001**

The State of Maharashtra

....Appellant/Complainant

V/s.

Balgonda Shivgonda Bhojkar,
Age – 58, Occ.: Service,
R/o. Talandage, Jain Galli,
Taluka – Hatkanangale,
District – Kolhapur

.....Respondent/Accused

Ms. Pallavi N. Dabholkar, APP for State – Appellant.
Mr. Ganesh Gole for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 5th OCTOBER 2020

ORAL JUDGMENT :

1 This is an appeal filed by the State impugning an order and judgment dated 29th January 2001 passed by the Special Judge, Kolhapur, 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 The charge in the matter is that accused, during the period 2nd May 1992 to 1st May 1994 was serving as Maintenance Surveyor, having jurisdiction over Village Vadanage, Taluka – Karveer and he was a public servant. Being Maintenance Surveyor, it was duty of accused to maintain register of property and to mutate the entries regarding sale and purchase of the properties. One Dilip Babaso Bodake, complainant (PW-1) had purchased a property and made an application to enter his name in the property card

and that work was pending with accused. Complainant repeatedly met the accused but accused was not attending to the work. During one of his repeated visits to the office of accused, accused demanded an amount of Rs.250/- as bribe and told complainant to give the same as early as possible. On 14th February 1994, complainant met accused at about 1.00 p.m. in the office of accused and till that time the work of complainant was not done. On that day accused once again demanded a sum of Rs.250/- as bribe. On 15th February 1994, when complainant went to the office of accused, once again accused demanded Rs.250/- and accepted the same by way of gratification other than legal remuneration. Accused being a public servant, according to prosecution, is guilty.

3 It is the case of prosecution that complainant has been visiting the office of accused from February 1993 because complainant has purchased the property by a sale deed dated 20th February 1993. Even as late as 18th December 1993 accused had not done the work required by him, i.e., entering the name of complainant in the record of city survey.

4 Coming to the specifics, on 14th February 1994 at about 1.00 p.m. when complainant had gone to the office of accused, accused demanded Rs.250/- and told complainant that unless the amount is paid first he will not look into the matter. It seems when complainant was about to leave the office, accused told him again that on the next date he will be available in the office and if complainant comes with the amount, accused will accept the same and will also issue the property card. Complainant informed accused

that he will come after 2 to 3 days. On the same day, i.e., 14th February 1994, complainant (PW-1) went to A.C.B. and informed PW-5 - Mirashi, who was Deputy Superintendent of Police, and lodged the complaint.

5 After the panch witnesses were called and after completing the pre-raid formalities, it was agreed for laying a trap on 15th February 1994. Complainant entered the office of accused alongwith PW-2 and greeted the accused. There were 5 to 6 other persons sitting in the same office and one of whom was one Sagar Patil, who was known to complainant (PW-1). Accused told PW-1 to wait for some time as he had some work to be attended to of the persons sitting there. Accordingly, PW-1 and PW-2 went to the ground floor (the office of accused was on the first floor) and waited. When they saw some persons, who were in the office leaving, complainant (PW-1) and PW-2, panch witness, went up to the office of accused where accused was found sitting in his chair. Two other persons were present before him. Complainant then informed the Peon Kamble, who again has not been summoned as witness, to get six teas and cigarette. Peon Kamble brought the tea and cigarette and after they had tea and complainant smoked the cigarette, complainant inquired with accused as to what happened to his work. Accused then told that within a period of 2 to 3 days he will give property card to complainant. Accused then inquired as to what happened to the money. Complainant informed that he has brought the money with him. During the discussion, accused also informed complainant that the extract of property register will be given after 3 to 4 days as the signatures of his

officer (saheb) is yet to be obtained. Thereafter, accused got up from his chair and called complainant into a room situated on the same floor. Complainant followed him and entered in that room where accused told him in Marathi to give the money. Complainant then handed over the marked currency of Rs.250/- (5 X Rs.50/-). Accused accepted the same by right hand and counted the amount. Accused then kept the money in his left side pocket of his shirt and came out of the room and sat in the chair. Complainant then went to the balcony and gave the agreed signal at which time the raiding team led by PW-5 DYSP Mirashi came to the office of accused and caught him red handed with the tainted money.

6 What is relevant to note is the panch witness PW-2 Kamble, who was supposed to accompany complainant and report on the demand and collection of money, though he was present in the office of accused, did not accompany accused and complainant into the side room. According to him, he went to a window near the western side of the room and from there peeped into the room where the demand and giving of bribe happened and he also states the same what complainant (PW-1) has stated about how the money was asked, how the money was given and how the amount was counted by accused. With the raiding party led by DYSP Mirashi (PW-5), there was one Police Inspector Chavan, who prosecution says caught the wrist of the accused and also the other panch witness one Mr. Jadhav. Subsequently, the post-trap panchnama was prepared and complaint was lodged, which was converted into an FIR and the sanction from PW-3 one

Shriram Kulnethe was obtained. Charges were framed accusing accused of offence under Section 7, 13 (1) (d) read with Section 13 (2) of PC Act.

7 Statement of accused under Section 313 was recorded. Accused has stated that under him there were 12 villages and he also had additional charge of another 18 villages and there was tremendous workload and he was doing his work to the best of his ability. As regards the present case, accused has stated that on filing of application by complainant he has made the necessary endorsements, recorded the statement of complainant and also gave notice on 16th December 1993 as per the order of the City Survey Officer to the buyer as well as seller and obtained their signatures. Notice was also given inviting objections and the 15 days period of notice was over on 3rd January 1994. On 18th December 1993 complainant filed an application to get copies and accordingly copy of extract of property register was also supplied to him. As regards the allegation of demand of bribe and acceptance, accused states that on 18th December 1993 he never even demanded any money and there was no talk or any transaction with complainant. On completion of the period of notice, accused completed all the paper work required to be done at his level and sent to the City Survey Officer and thereafter, those papers never came in his possession again. According to accused, even PW-4 Shinde, who was serving in the office of land record, was not having the papers with him and as papers were not found with the accused, PW-5 DYSP Mirashi has obtained some documents from Shinde only to harass him. As regards the amount of bribe, accused has

said the amount was not found with him and the Investigating Officer by joining hands with complainant and panch witness has prepared false documents in the form of complaint, panchnama etc. The crux of the defence is whatever work was to be done by accused was done already and he had supplied the extract of property register. But the work of certifying the entry was within the exclusive jurisdiction of his superior officer and accused was not concerned with him.

8 To bring home its charge, prosecution examined Dilip Bodake, complainant as PW-1; Shashikant Kamble, panch witness who was accompanied complainant as PW-2; Shriram Kulnethe, the sanctioning authority as PW-3; Shantaram Shinde, one of the staff members from the main office of accused at Kolhapur as PW-4 and Govind Mirashi, the Investigating Officer as PW-5.

9 I have considered the records and proceedings as well as the impugned judgment with the assistance of the learned APP Ms. Dabholkar and the defence counsel Mr. Gole and I see no reason to interfere with the impugned judgment.

10 Ms. Dabholkar ofcourse submitted that (a) accused has not explained how the money was found on him and (b) the Trial Court has erred in concluding that no work was left to be done at the level of the accused and accused has not committed any offence under the PC Act.

11 As regards the first point, the defence of the accused has been that no money was found on him and all documents including complaint and

panchnama has been fabricated. On the second point, the Trial Court has disbelieved the case of the prosecution because prosecution has not even proved the demand by accused. As regards the application of the complainant, the role of the accused was to effect the entry of the complainant against the property which accused has fulfilled. Immediately on entering the name of complainant in the property register, a certified extract of the property register was delivered to complainant and there is a remark in Marathi “*Nond Manjur Honevar*”, which means the entry is made subject to the approval of the superior officer. Therefore, the work what was required to be done by the accused has been completed. What was required to be done was for the superior officer to record his approval and that was to be done at Kolhapur. Whether the accused was supposed to take the papers to Kolhapur for obtaining the approval or during the monthly visits, when the superior would come to the office of the accused, the approval has to be obtained, no evidence has been led. This is notwithstanding PW-4, who was an official from the head office at Kolhapur, being called to give evidence, has not been told to explain the procedure how this approval has to be obtained. Therefore, for prosecution to say that accused took money to get the approval from the superior officer has not been accepted by the Trial Court. One more point which has come in the mind of the Trial Court that even in the application, that was given by complainant to the accused, complainant has only sought entering of the name of complainant against the property purchased by him. The application does not mention that in addition to

entering the name of complainant against the property, the same be certified by a superior officer.

12 Moreover, the two independent witnesses, who were present in the office of the accused at the time of the raid, one of which was one Sagar Patil, who was known to complainant, have not been examined. Even the Peon Kamble, who had bought tea and cigarette just before the alleged final demand was made, has not been examined. There is no explanation as to why these people were not examined because more than the witnesses forming part of the raiding party, these independent witnesses would have been more reliable as witnesses. Even PW-4 Shinde, who was from the office of accused, has clearly stated that the work to certify the entry is the duty of a City Survey Officer and the accused has no concern with that as part of his official duty. One more point which has come in the mind of the Trial Court, and I cannot find fault with that, is the panch witness PW-2, who had accompanied the complainant, was not in real term an eye witness. This is because admittedly, PW-2 did not accompany complainant and accused to the side room where the money was allegedly demanded and given. PW-2 says he peeped into the room from the window on the western side of the room and he could see the demand being made and the amount being given and counted by accused. The prosecution has not submitted the map or the floor plan of the office of accused stating therein where PW-2 stood, where the window was and where accused and complainant were standing inside the room. Complainant has not disputed that in continuation to his

application dated 11th August 1993, accused has recorded his statement. It is also admitted that the extract of the property register has been delivered to complainant. Complainant has not stated anywhere that even at that time, i.e., while delivering extract of the property register to complainant, accused demanded any amount of bribe. Admittedly, complainant confirms that his name has been entered in the property register but it has not been certified by the superior officer of the accused. It has come in evidence that on 18th December 1993 itself complainant was aware that the property entry has been made against his name subject to certification by the superior officer. Complainant was aware that accused had no role to play for certification and it has to be done by his superior officer at Kolhapur. The evidence of complainant and PW-5 reveals that complainant used to go to Kolhapur often but not once did he go to the office of the superior officer to even make a request for certifying the entry.

13 Another point which came in the mind of the Trial Court was, 18th December 1993 is the date when the complainant states the first demand of Rs.250/- was made but he goes only on 14th February 1994. There is no explanation as to why he did not follow up between 18th December 1993 and 14th February 1994 and why he waited for two months. These are the points which were in the mind of the Trial Court to disbelieve the prosecution's story of demand of bribe. Another point which has gone against the prosecution is, both PW-1 and PW-2, have in their evidence stated that shortly before entering the witness box, statement recorded by the Police and other

documents were made available to them for reading, photocopies were given to them and they had made notings on those photocopies. The Trial Court felt that therefore, these witnesses have been tutored by the Police to give answer as to what infact transpired in the office of the accused on 15th February 1994. The Trial Court has relied on a judgment of the Gujarat High Court, i.e., ***Kanbi Vaghje Savji V/s. State of Gujarat***¹ that little value should be attached to the evidence of such witnesses because when PW-1 and PW-2 deposed to the particular incident, they did not depose from the recollection of that incident but from what has been read out from the police statement a short time before the deposition started. This was one more point for disbelieving the prosecution's case of demand. The Trial Court has also noted that the names of the two persons, who were present while the raid happened, are also not mentioned in the panchnama but the names are found in the complaint lodged by PW-5 in the Police Station. As noted earlier, these two persons has not been summoned as independent witnesses. Failure to examine these material witnesses certainly will cause a dent in the prosecution's case. There is no explanation from the prosecution as to why the other panch witness Jadhav who allegedly removed the tainted money from accused and P.I. Shinde, who caught the wrist of the accused, have been examined.

14 PW-4 Shinde admits that accused was having charge of almost 44 villages and that he was not allowed to certify the entries. Moreover, all the documents, which PW-5 claims to have recovered from accused, were never produced alongwith the chargesheet. PW-4 admits that in the police

1. AIR 1968 Guj. 11

statement, he has not stated that the accused handed over all the papers to him. Infact PW-5 should have produced all the documents obtained from the custody of accused through PW-4 at the time of filing of the chargesheet. Prosecution however, produced the documents only after the evidence commenced and witnesses were examined. Another point which came in the mind of Trial Court against prosecution's case is despite repeatedly being called upon, PW-5 or the prosecution has failed to produce the case diary. PW-5 admits that he had maintained the case diary and he has to send the case diary with the chargesheet but no attempt was made to produce the case diary. PW-5 also admits that on 11th October 2000, when his evidence was recorded for the first time, he had produced all the papers and that he had not produced these papers with the chargesheet. PW-5 also admits that there was no special reason for him for not producing these documents with the chargesheet when he says all documents and registers were taken on the same day in his custody.

15 Considering the evidence of PW-5, the Trial Court has noted that the Investigating Officer has not come with clean hands before the Court and the investigation does not seem to be done with honesty. PW-5 has also admitted that there were two independent witnesses at the time of raid and there names were not appearing in the panchnama. Strangely those names are found in the FIR.

16 On these circumstances, the Court came to a conclusion that the prosecution has failed to prove beyond reasonable doubt the guilt of

accused. This Court in its judgment in the matter of ***The State of Maharashtra V/s. Smt. Talimunisa Rais Ahmed***² in paragraphs 15 and 16 has held as under :

15. The indisputable fact is there was no anthracene marks found on person of accused, from the drawing of the room and seating arrangements in the room which has been brought on record by PW-2, the place where accused was sitting was far away from typewriter, which was closer to where PW-1 was sitting. The onus is on prosecution to prove 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. In V Sejappa Vs. State by Police Inspector Lokayukta, Chitradurga³, 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. This judgment was relied upon by Mr. Joshi and he further 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 Appellate court should not interfere.

16. Mr. Joshi also relied on State of Gujarat Vs. Navinbhai Chandrakant Joshi & Ors.⁴, to submit that the presumption under Section 20 of the 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 Navinbhai Chandrakant Joshi (supra) 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

2. Criminal Appeal No.843 of 2004 dated 28th February 2020

3. (2016) 12 Supreme Court Cases 150

4. (2018) 9 Supreme Court Cases 242

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."

17 This would also answer the point raised by Ms. Dabholkar in the beginning that accused has not explained how the amount was found on him. The onus is on prosecution to prove beyond reasonable doubt that accused accepted or obtained the amount other than legal remuneration and once that burden is discharged, the onus shifts to accused but the burden on the accused is only one of the preponderance of probabilities.

18 The Apex Court in ***Ghurey Lal V/s. State of U.P***⁵ 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.

5. (2008) 10 SCC 450

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***⁶ 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

6. (2014) 5 SCC 730

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*⁷ 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.

19 There is an acquittal and therefore, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to the 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, the accused having secured their acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting the accused, the Trial Court

7. 1996 SCC (cri) 972

rightly observed that the prosecution had failed to prove its case.

20 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.

21 Appeal dismissed.

22 The Government/Appropriate Authority shall pay over to respondents, 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 the 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 respondents.

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.)

Gauri A.
Gaekwad

Digitally signed
by Gauri A.
Gaekwad
Date:
2020.10.13
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