

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.903 OF 2003**

The State of Maharashtra) ..Appellant

Versus

Sikandar Khutubuddin Mujawar)
47 yrs. Occu. Serive, r/o Mangeshkar Nagar)
Plot No.74, Kolhapur.) ..Respondent

Ms Anamika Malhotra APP for Appellant
mr. Imtiyaz A. I. Patel for Respondent

**CORAM : K.R.SHRIRAM, J.
DATE : 29th JANUARY 2020**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 17-5-2003 passed by learned Special Judge, Kolhapur, acquitting respondent (accused) of charges under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption act 1988 (PC.Act).

2 The facts in brief are that complainant – Dattatray @ Devgonda P. Patil (P.W.-2) resides at Ichalkaranji with his mother and other family members. His mother owned certain lands and complainant was looking after the said lands. To get the boundaries of the lands fixed, the mother of complainant had filed an application in the month of January / February 1996 in the office of Taluka Inspector of Land Records (TILR), for getting the lands measured and mark the boundaries. The required fees

has also been paid. Despite paying the requisite fees, the work was not done. Hence, complainant made repeated visits to the office of the TILR, there he met respondent, who was working as surveyor in that office and respondent was only telling complainant every time that he will fix the date and issue notice of measurement. In the month of June 1996, respondent had issued notices for measurement but did not turn up because of which, the work of measurement was pending.

3 Again on 6-12-1996, complainant filed an application in the name of his mother for measurement in TILR office, Shirol and obtained receipt. Complainant again visited two or three times to the office of the TILR and met respondent and requested him to issue notices of the date of measurement. Respondent, however, kept giving only empty assurances.

4 Again in the last week of February 1997, complainant met respondent in his office, at which time, respondent is stated to have told complainant that complainant will have to spend some money for getting the lands measured and only after he pays the money, respondent will fix the date for measurement and issue notices. Complainant informed respondent that he had already paid requisite fees and also showed him the receipt. Respondent told complainant he will have to pay a sum of Rs.400/- to him as bribe and only then the work will be done. It was agreed that Rs. 200/- should be paid before issuance of notices and balance Rs.200/- to be paid after the measurement work was completed. Respondent informed

complainant that he will fix the date and issue notices and also gave his phone number and asked complainant to contact him on that number.

5 In the month of March 1997, complainant contacted respondent over telephone from Ichalkaranji. Respondent informed complainant that he has fixed the date of the measurement as 15-3-1997 and the notices were issued and asked complainant to pay Rs.200/- immediately after he receives the notice. On 11-3-1997, complainant again contacted respondent over telephone and informed him that he has not received the notice, but respondent informed complainant that notice has already been issued by RPAD and told complainant to contact him after the notice was received. On the same day, i.e., 11-3-1997, complainant received the notice after noon intimating that the measurement of land will take place on 15-3-1997. Complainant telephoned respondent and informed him that he has received the notice and that he will remain present on behalf of his mother at the time of the measurement. Respondent asked complainant to bring Rs.200/- and further told that on 13-3-1997, respondent will come to Village Nandani for the measurement of some other land and complainant should come there and pay Rs.200/- to him at Nandini Village. Complainant agreed to it.

6 On 12-3-1997, complainant contacted ACB, Kolhapur from Ichalkaranji on telephone and stated that he wanted to lodge a complaint against respondent. Complainant was informed that ACO Mr. Mirashi, who is also P.W.-4, had gone to Ichalkaranji and he should meet Mr. Mirashi at

Ichalkaranji. Complainant went to Ichalkaranji to the rest house at Ichalkaranji and met P.W.-4 and narrated his grievance to P.W.-4. Complainant's complaint was reduced into writing vide Exhibit 15. Mr. Mirashi, P.W.-4 directed complainant to come to the office of ACB, Kolhapur on 13-3-1997 in the morning at 7.00 a.m., with money of Rs.200/-. Accordingly, complainant attended the office of ACB, Kolhapur, on 13-3-1997 with the money of Rs.200/-. P.W.-4 had called two persons from the RTO office Kolhapur to act as panchas and those persons were present in the office of ACB, Kolhapur, on 13-3-1997 in the morning. Panchas and complainant were introduced to each other and complainant informed the panchas his grievance. Complaint (Exhibit-15) was given to panchas for reading and the panchas signed the same having read it. After completing the pre-trap panchnama, the raiding party proceeded to trap respondent.

7 The raiding party proceeded for Village Nandini at 9.20 a.m. on 13-3-1997 and reached the village at about 10.15 /10.30 a.m. The vehicles were parked on one side and complainant and panch witness P.W.-1 went on foot to the grampanchayat office. Respondent was not found in the office so complainant and panch witness (P.W.-1) came back and informed P.W.-4 about it. All of them waited at S.T. Bus stand of Village Nandini and after about 45 minutes respondent came therein in a van. Complainant and panch witness went near respondent, greeted him with namaskar and at the invitation of complainant, all of them went to have tea. There was another

person, who was accompanying respondent and he was the peon in the office of TILR. While having tea, complainant told respondent that he had come prepared and his work should be done on 15-3-1997. Complainant thereafter, took out the marked currency from his pocket and gave it to respondent. Respondent accepted and kept it in the right side pocket of his pant while seated. Complainant went to the counter of the hotel, paid the bill and went outside and gave the signal as instructed, to the raiding party. The raiding party, P.W.-4 caught respondent redhanded and then they came to the grampanchayat office at Nandini in the vehicles of the raiding party. At grampanchayat office, the personal search of respondent was taken and in his shirt one pencil, spectacles, calculator and one passbook were found and in his left side pant pocket amount of Rs.170/- and one coin were found. The marked currency was taken out from the pocket of respondent by second panch witness, who has not been examined and when respondent was checked under ultra violet light, traces of anthracene powder were found on the 'finger tips' of right hand of respondent and on the right side pocket of his pant. Accordingly, a post trap panchnama was prepared, statements were recorded and after obtaining necessary sanction from the concerned authority, crime was registered against respondent. Charge sheet for offence under Section 7, 13(1)(d) and 13(2) of the P.C. Act 1988 was drawn. Respondent pleaded not guilty and claimed to be tried. Respondent's defence was one of total denial and in his statement under

Section 313, respondent has stated that false case has been lodged against him.

8 In the charge sheet, 13 witnesses were listed including the peon, who was accompanying respondent at the time of raid. But only 5 witnesses were examined namely; Vilas Narayan Shinde - panch witness as P.W.-1, Dattatraya Patil – complainant as P.W.-2, Dagdu Dhondur Madke – Deputy Director of Land Records as sanctioned authority as P.W.-3, Govind Shankarrao Mirashi – Deputy S. P, ACB as P.W.-4 and Sudhir Ramchandra Chougule – Deputy S.P ACB as P.W.-5. Documents were also exhibited.

9 The Apex Court in ***Ghurey Lal Vs. State of U.P¹*** 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 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

1 (2008) 10 SCC 450

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

2 (2014) 5 SCC 730

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 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.

10 In so far as the offence under Section 7 of PC Act is concerned, it is a settled position in law that demand of illegal gratification is sine qua

3 1996 SCC (cri) 972

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*⁴).

11 I have perused the impugned judgment, considered the evidence and also heard Ms. Malhotra, learned APP and Mr. Patel, counsel for respondent. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment.

12 Having considered the evidence, prosecution has miserably failed in proving that there was a demand and acceptance also. We do not need to go too far to ascertain, why I am saying this because the evidence of P.W.-1, who was panch witness and P.W.-2 – complainant, itself is a total give away.

13 P.W.-2 says that in June 1996, respondent has given notice for measurement but did not turn up. P.W.-2 does not say at that time respondent demanded any money. The trap was laid to be held in the office of respondent, but why was it changed to the S.T. Bus Stand, nobody knows. P.W.-1-panch witness has deposed they went to take tea and respondent and complainant sat on the same bench alongwith other person.

4 (2014) 13 SCC 55

But P.W.-2-complainant says respondent sat on the steel chair. It is also stated that complainant gave the bribe amount to respondent and then they all had tea. Respondent took the money and put it in his right side pant pocket. Respondent is supposed to have been wearing a Manila Shirt and Trouser. Manila Shirt, normally worn in Maharashtra, is a long shirt and the length goes almost up to the thigh of the wearer. Though P.W.-1 says that respondent took the money and put it in his right side pocket of his pant while sitting and P.W.-2 says respondent stood up and put the money in his pant pocket, one thing is clear that, to put the money in the pocket while sitting or standing, respondent will have to lift the shirt or at least touch the shirt. It has come in evidence that traces of anthracene were found only on the finger tips of the right hand of respondent and right side pocket of his pant. I am surprised, why only finger tips, because if somebody has to place the currency into his pant pocket, certainly the marked currency will come in contact with all the fingers and also at least a part of the palm. Secondly, there will be anthracene powder marks even on the shirt when the amount is being put inside the pant pocket. Even the cup, in which tea was taken by respondent, would have the anthracene marks, but no attempt was made even to pick up that tea cup as evidence.

14 The most important lapse is, the panchanama was not drawn in the tea stall, where respondent was trapped according to prosecution. Respondent was taken to grampanchayat office, where the panchnama was

drawn and respondent was taken in the car or vehicle of the raiding party. On this ground alone, prosecution's case has to fail. Prosecution has not even identify which was the vehicle, in which, respondent was taken, where respondent sat, who was beside respondent in the car, etc. Most importantly, the peon who was accompanying respondent, has not been examined, though he is listed as witness. Even the tea stall owner has not been examined, though he is also listed as witness. Other persons in the raiding party have also not been examined.

15 Prosecution says that pant, which respondent was wearing, was seized and a new pant was given to respondent. I wonder, from where prosecution brought the pant for respondent, which would fit him, nothing is explained.

16 There are many more omissions, contradictions and lapses that have been listed in the judgment impugned. I do not wish to list all those for the sake of brevity. Suffice to say, I agree with those observations.

17 The Apex Court in ***Chandrappa & Ors. V/s. State of Karnataka***⁵ 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

5 (2007) 4 SCC 415

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 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."

18 There is an acquittal and therefore, there is double presumption in favour of 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, accused having secured acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court observed that the prosecution had failed to prove its case.

19 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, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

20 Appeal dismissed.

21 The State Government/Appropriate Authority shall pay over to respondent, within a period of 30 days from today, all pensionary or other benefits/dues stalled, in view of pendency of this appeal. 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. After 30 days interest at 12% p.a. will have to be paid by State Government/Appropriate Authority to respondent.

(K.R. SHRIRAM, J.)