IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1100 OF 2003

The State of Maharashtra)
(through Dy.S.P., A.C.B, Solapur))....Appellant
(Org.Complainant)

V/s.

Sudhakar Ramchandra Thakar)
Age about 36 years, Occ. Police Head)
Constable (Under suspension))
R/o Akluj, Tal. Malshiras, Dist. Solapur)....Respondent

Mrs.Anamika Malhotra APP for the State.
Mr.Vaibhav Charalwar as Amicus Curiae for respondent.
Mr.Dinesh W.Bhosale for respondent.

CORAM: K.R.SHRIRAM,J
DATE : 19.10.2020

ORAL JUDGMENT :-

1. This is an appeal filed against the order of acquittal dated 8.4.2003 passed by the Special Judge of Prevention of Corruption Act at Pandharpur acquitting respondent of offences punishable under sections 7, 13(1) (d) read with section 13(2) of Prevention of Corruption Act 1988 ('PC Act').

2. Heard Mrs.Malhotra the learned APP. The counsel for

respondent stated that he does not even have the papers though the appeal was admitted in 2003. Learned Amicus Curiae in fairness states that in view of the pandemic, he was unable to prepare and assist the Court in the matter and only yesterday he came to know about the matter being listed.

3. The prosecution's case is that respondent who was a Police Head Constable at Akluj police station demanded an amount of Rs.2,000/- from Uttam Raosaheb Sartape PW-2-complainant as bribe to help him escape from a complaint lodged by one Ratnabai. It appears that PW-2 had borrowed sum of Rs.5,000/- from Ratnabai and Ratnabai had approached respondent to help to her recover the amount from PW-2. PW-2 handed over Rs.3,000/- to Ratnabai and signed the document whereby he acknowledged his liability to pay the balance amount of Rs.2,000/- and Ratnabai acknowledged having received Rs.3,000/- out of Rs.5,000/-. There are many other things stated but for this matter we need not go into so many details.

4. The crux of the matter is whether the amount of Rs.2,000/- given by respondent when the trap was effected was the bribe amount or the amount to be handed over to Ratnabai by respondent. Reading the evidence, it does not appear that it was the bribe amount. PW-2

who was complainant admits the document (Exh.15) which is an application made by Ratnabai to the police that PW-2 had taken Rs.5,000/- loan from her and he had not returned it. The application was to help Ratnabai to recover the amount from PW-2. PW-2 complainant admits that he had to pay Rs.5,000/- but on 13.11.2000 he paid only Rs.3,000/- and also admits his signature and thumb impression of Ratnabai on Exh.17. In Exh.17 he also admits that he had agreed to repay balance amount of Rs.2,000/- in 4 to 5 days. He also admits that he had signed on the documents on 13.11.2000. PW-2 also admits that remaining amount of Rs.2,000/- was not to be given at the house of Ratnabai or at his residence but in the police out post at Malinagar. He further admits that he had to repay the amount of balance Rs.2,000/- because Ratnabai had given an application and respondent had called them to the police out post and that Ratnabai had repeatedly asked him to return the amount but he did not and respondent only assisted Ratnabai in recovering the amount from him. PW-1 Udaysinha Narayan Sinha Gautam-Shadow panch witness and also PW-2 stated that when the amount of Rs.2,000/- was given, respondent inquired why there was powder on them and he was informed that money was kept in the bag of flour and while counting he saw trap team approach him and he started running and threw the amount in front of the butcher’s shop. Ratnabai strangely has not been called to give evidence in the matter.

5. Considering the above, it does appear that on 17.11.2000, the date of the trap, PW-2 had gone to meet respondent only to give amount of Rs.2,000/- that was still payable to Ratnabai. The defence raised by respondent that he has not demanded or accepted Rs.2,000/- as illegal gratification from PW-2 but the amount of Rs.2,000/- was being given to him to be paid over to Ratnabai towards the outstanding loan, appears more probable. It is trite that respondent need not prove his defence beyond reasonable doubt and the defence has to only make out a case on balance of probability.

6. It is settled law that mere acceptance of tainted currency is not sufficient to prove offence under Section 7, 13(1)(d) read with 13(2) of the Act. It must be proved beyond reasonable doubt that the money accepted was in pursuance of an agreement to do something in consideration of bribe and that too in exercise of his official function.

7. It is also to be noted that PW-1 has stated that the trap notes were applied with anthracine powder and were given to PW-2 who kept them in the left side pocket of the shirt. But PW-2 stated one panch applied the powder, folded currency notes and kept them in the

left side pocket and that is not the prosecution's case either. The deposition of PW-1 and PW-2 have not only lot of discrepancies on record as to who applied the anthracine powder on the currency notes and who kept in the left side pocket of PW-2 but also exposes the errors in the procedure followed in case of trap. There are many other similar discrepancies noted in the trial Court's judgment with which I agree and for the sake of brevity I am not reproducing the same.

8. As per the pre trap panchanama one of the instructions given to complainant PW-2 was he would open the topic of his work but in the cross-examination PW-2 states that he has not given instructions that on meeting respondent, he should open the subject of his work. PW-1 has deposed that PW-2 had not opened any subject of his work with respondent. PW-4 admits that the purpose of opening the subject about the work was to see whether respondent accepts the money for their work or not. It appears that PW-2 had simply given the money to respondent which indicates that it was towards the outstanding loan amount to be repaid to Ratnabai. This also lays support to the version of defence that respondent accepted the amount to hand it over to Ratnabai towards outstanding dues. Panch no.2 Appasaheb was the one who picked up the currency notes and whose hands were also examined and presence of anthracine powder was noticed on the

fingers and his palm. This is also noted in the trap panchanama but strangely he has not been called to give evidence.

9. Therefore, I am not satisfied with the prosecution's case that there was a demand of Rs.2,000/- as gratification other than legal remuneration made for showing favour to PW-2 in exercise of the official function. Prosecution has failed to prove its case beyond reasonable doubt.

10. 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 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.*

1. (2008) 10 SCC 450

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

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

the order of the Trial Court, the Appeal Court need not even re-appraise the evidence and arrive at its own conclusions.

11. 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.

12. 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.

13. Appeal dismissed.

14. The Government/Appropriate Authority shall pay over to respondent, within a period of 30 days from the date respondent files

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)