

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.22 OF 2002**

The State of Maharashtra)Appellant/Complainant

V/s.

Bajarang Shankarrao Bodhane)

Age 50 yrs., Occ. Service, R/at. Ajmera)

Housing Society, Plot No.204, Pimpri, Pune)Respondent/Accused

Ms. Anamika Malhotra, APP for State – Appellant.

Mr. Sachindra B. Shetye a/w. Mr. Irfan A. Shaikh for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 28th JANUARY 2020

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 19th June 2001 passed by the Special Judge, Pune, acquitting respondent of offences punishable under Section 7 and under Section 13 (1) (d) read with Section 13 (2) of Prevention of Corruption Act, 1988 (PC Act).

2 The facts in brief are that complainant - Baban Ganpat Sathe (PW-1) was a farmer residing at Nagargaon, Taluka - Shirur, District – Pune. Respondent was in the service of Deputy Director of Land Record, Pune, working as Nimtandar and at the relevant time, was posted at Shirur, District – Pune.

3 Complainant's father wanted to correct the record of formation of block and hence, complainant applied in the name of his father to the Deputy Director of Land Record, Pune. About two or three years prior to the trial, new office of Land Record was established at Shirur. One Kamalakar Joshi was posted as Taluka Inspector of Land Record and respondent was

working under Kamalakar Joshi as Surveyor. On the demand of the said Kamalakar Joshi, complainant and his nephew – Hanumant Sathe, gave bribe of Rs.500/- each on two occasions. The assurance was given by Kamalakar Joshi to complete the work but it was not done and records were not corrected by Kamalakar Joshi. Complainant re-submitted applications in the name of his father and complainant and his two brothers were called for recording statements.

4 It is alleged that respondent demanded bribe amount of Rs.1,000/- from complainant and informed complainant that unless the amount is paid, the work of complainant would not be done. Despite request of complainant, the bribe amount was not reduced and as no amount was paid, the work remained pending. It is alleged that complainant met respondent on many occasions but respondent repeated that unless his demand is fulfilled, the work would not be done.

5 On 9th December 1996, complainant met respondent in his office at which time, respondent once again demanded the bribe amount. Therefore, PW-1 (complainant) went to the office of A.C.B. Pune on 10th December 1996 and complained to P. I. - Sharad Ramchandra Survey, who is PW-4. PW-4 asked complainant to come on the next day. After complying with all the formalities and preparing pre-trap panchnama, the office of respondent was visited on 11th December 1996. At the office of respondent, PW-1 (complainant) and PW-2, panch witness, occupied the seats in front of respondent's table. Respondent then said that he would

complete the work of complainant and left the place after informing complainant that he will have a cup of tea and come back. Respondent was away for about 20 minutes and on his return, asked complainant whether he has brought the money. Complainant nodded in affirmative at which time respondent pushed one paper towards complainant and asked complainant to wrap the money in that paper. Accordingly complainant took out the bribe amount from the left pocket of his shirt, wrapped the amount in the paper and placed it under the file which was on the table of respondent. Respondent then took the paper, unfolded it, saw the contents and kept the same in the shelf below the drawers of his table. Respondent thereafter, informed complainant that his work will be done.

6 At that time, complainant got up, went outside, gave signal and then the raiding party entered. Respondent was identified by PW-2 to PW-4 and PW-4 caught respondent by both his wrists after disclosing his identity. Respondent replied that he has done nothing wrong and he was innocent. PW-2 pointed out that the bribe amount wrapped in a paper is kept in the shelf below the drawers of respondent's table and on instructions of PW-4, the other panch witness, who was not examined, opened the door of the shelf, took out the wrapped paper in which the bribe amount was found. The fingers of respondent was checked for presence of anthracene powder but only on the fingertips of his left hand ring finger and the small finger a faint trace of anthracene powder was found.

7 After investigation, sanction was granted for prosecution and then complaint was filed and respondent was chargesheeted. Respondent denied all allegations and pleaded not guilty and claimed to be tried.

8 To prove its case, prosecution led evidence of four witnesses, viz., complainant - Baban Ganpat Sathe as PW-1, Chandrashekhar Ramdas Wadekar, panch witness as PW-2, Dagadu Dhondur Madake, the sanctioning authority as PW-3 and Sharad Ramchandra Survey, Investigating Officer as PW-4. In addition to the oral evidence, prosecution tendered for admission or denial of defence, various documents which have been listed in Exhibit 5. All those documents were admitted and accordingly have been exhibited.

9 As stated in the impugned judgment, even I do not find anything wrong regarding the sanction granted for prosecuting respondent. At the same time, there are so many inconsistencies and improbabilities and contradictions that I am unable to gather myself to interfere in the impugned judgment.

10 The factors to be kept in mind in an appeal against acquittal have been explained in ***Ghurey Lal V/s. State of U.P.***¹ and paragraphs 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.

1. (2008) 10 SCC 450

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.

11 I would add that there are so many other judgments dealing with the approach of the Appellate Court in appeal against acquittal. In

Muralidhar and Ors. V/s. State of Karnataka ², the Apex Court after listing many matters, where this has been dealt with, has very pithily laid down the points the Appellate Court must bear in mind and the same are as under :

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court,

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal,

(iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are 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, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and

(iv) 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. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.

12 Therefore, unless the conclusions reached by the Trial Court are 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, the Appellate Court should be reluctant to interfere with such conclusions of the Trial Court. Even if a different view is possible, interference with judgment of acquittal is not justified if the view taken by the Trial Court is a possible view.

13 In ***Ramesh Babulal Doshi V/s. State of Gujarat*** ³, the Apex Court held that while sitting in judgment over an acquittal the Appellate Court is

2. 2014 (5) SCC 730

3. 1996 SCC (Cri) 972

first required to seek an answer to the question whether the findings of the Trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the Appellate Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the Appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of these infirmities that the findings are palpably wrong, manifestly erroneous or demonstrably unsustainable, it can then and then only re-appraise the evidence to arrive at its own conclusions. Paragraph 7 of the said judgment reads as under :

7. Before proceeding further it will be pertinent to mention that the entire approach of the High Court in dealing with the appeal was patently wrong for it did not at all address itself to the question as to whether the reasons which weighed with the trial Court for recording the order of acquittal were proper or not. Instead thereof the High Court made an independent reappraisal of the entire evidence to arrive at the above quoted conclusions. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellant Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellant Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellant Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions. In keeping with the above principles we have therefore to first ascertain whether the findings of the trial Court are sustainable or not.

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

demonstrably unsustainable in the impugned judgment.

15 The first point that hits me is PW-1, who is complainant, states that he was asked for illegal gratification of Rs.1,000/- by respondent and on 10th December 1996 he went to the office of A.C.B. in Pune and complained to PW-4 (I.O.). PW-1 states that the complaint was reduced into writing and after filing the complaint on 10th December 1996, PW-1 was called in the office of A.C.B. on 11th December 1996 at 8.00 a.m. and when he went, panchas were already present. Therefore, PW-1 says that his complaint was reduced into writing on 10th December 1996. But the complaint on record (Exhibit 13) is dated 11th December 1996. There is no explanation for this date difference. PW-4 says that he noted the complaint in writing only on 11th December 1996. PW-2, who is the panch witness, says that when they reached the office of A.C.B., a typed complaint of complainant was given for their reading, which they read and then signed on the same. Complaint (Exhibit 13) is not a typed complaint but it is a hand written complaint on which PW-2 and other panch witness have signed. Therefore, there is a doubt created, at the outset itself regarding the complaint lodged by PW-1.

16 As regards the demand of bribe, in paragraph 4 of evidence of PW-1, PW-1 states that he paid Kamalakar Joshi Rs.1,500/- and respondent was working under Kamalakar Joshi. There is no complaint against Kamalakar Joshi. It is also stated that Kamalakar Joshi did not do his work despite collecting Rs.1,500/- but informed him that he is only a signing authority for correction of record and the report for correction of record was

to be submitted by respondent. Kamalakar Joshi then advised PW-1 to meet respondent. PW-1 says that he was often meeting to respondent but he was also not doing his work and when he informed respondent that he has paid bribe to Kamalakar Joshi, then respondent demanded money from complainant for doing his work. Respondent demanded Rs.1,000/- and stated unless that amount is paid he will not submit report to Kamalakar Joshi for correction of record. PW-1 does not mention anywhere in paragraph 4 of his evidence the date on which the demand was made. Then in paragraph 5, PW-1 says on 9th December 1996 he met respondent in his office and told him that he would bring money on 11th December 1996 and on 10th December 1996 he went to the office of A.C.B., Pune. PW-1 does not say that on 9th December 1996 also respondent demanded money. Therefore, the fact of demand of money itself is again a question mark.

17 PW-1 thereafter says that when he went on 11th December 1996 to the office of respondent, he said namaskar to him and respondent informed him that he would do his work and asked him and PW-2 to be seated. Thereafter, respondent informed them that he would go and have tea and come back and accordingly left his seat. During the absence of respondent, PW-1 informed PW-2 that that man was respondent Bodhane. But PW-2 does not say that PW-1 identified respondent to him. PW-2 says that when PW-1 greeted respondent with a namaskar, he could guess that he must be respondent. Therefore, there is a contradiction here. PW-2 says after respondent returned from tea, respondent started perusing a file, which he

took out from his cupboard, in which there was a map which respondent unfolded. PW-1 is silent about this. It is also alleged that respondent asked PW-1 whether he has brought the bribe money and PW-1 nodded in affirmative at which time respondent passed a sheet of paper and told PW-1 to wrap the bribe amount in that paper and place it under the file and thereafter, the wrapped currency note was removed by respondent and placed in the shelf below the drawers of his table. If respondent really wanted to accept the bribe, why would he do all this exercise. Respondent would have simply invited complainant and PW-2 to go with him for tea and in some corner would have accepted the money. This is because admittedly there were many other employees, who were sitting in and around respondent. Admittedly, there were other clerks sitting at the distance of 2 feet from the table of respondent. Admittedly, nearby respondent, there were two-three ladies clerk and 2 male persons, who were sitting near the table of respondent. The place where respondent was sitting was also right in front of Kamalakar Joshi's cabin. If the demand, at the time of trap, was made in the presence of clerk sitting at the distance of 2 feet from the table of respondent, then I cannot fathom the reason as to why none of those clerks or employees, who were sitting around respondent, were called to testify. I have to note that in the chargesheet, there are 21 witnesses, who have been listed as against which only 4 witnesses have been examined, one of whom is the sanctioning authority.

18 Even assuming respondent demanded the bribe amount in the presence of his co-workers, who were sitting just 2 feet away from him, why would respondent asked complainant to wrap the bribe amount in the piece of paper and place it under the file. He would have openly taken and put it in his pocket instead of asking complainant to wrap the amount in a paper and place it under the file and then keep the amount in a shelf below the drawers. Probably taking advantage of the absence of respondent, when he had gone for tea, complainant for reasons best known to him, might have placed the amount under the file.

19 Another important question is whether respondent was in a position to do the work of complainant. The evidence indicates that respondent was not in a position to do the work. It is complainant's case that right from 1988 to 1996, complainant was making the rounds of the land survey office requesting them to do his work, which was not done and hence, he adopted the course of giving bribe in getting his work done. It is complainant's case that even after bribing Kamalakar Joshi Rs.1,500/-, his work was not done. Would he still trust another employee who works under Kamalakar Joshi with Rs.1,000/- without even ensuring that the work was not done before. PW-1 does not say anywhere that he even ensured that his work was done or he asked respondent to do his work immediately. Would he not be once bitten twice shy, before parting with another Rs.1,000/- when according to him he was living a life of penury. The evidence of prosecution is improbable and cannot be believed.

20 As regards traces of anthracene powder in the hands of respondent, PW-2 states that he does not even remember in which hand of respondent anthracene was seen but it was found very slightly on the fingertips.

21 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 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).

22 As noted earlier, the demand has not been proved. Even the recovery is doubtful because the amount was not found in the person of respondent but was found allegedly in a shelf below the drawers in the table of respondent. There are many such inconsistencies in the judgment impugned, which for the sake of brevity, I do not wish to list. As stated earlier, I do not find that the conclusion arrived at by the Trial Court was patently illegal or untenable.

23 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.

4. (2014) 13 SCC 55

5. (2007) 4 SCC 415

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 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.”

24 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.

25 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.

26 Appeal dismissed.

27 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.)