

**N THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1161 OF 2003**

State of Maharashtra	)	..Appellant (Orig. Complainant)
Versus		
1. Ajit Sitaram Naik-Satam	)	
Inspector, Mumbai Agricultural	)	
Produce Marketing Committee	)	
Vashi, Navi Mumbai	)	
2. Sou Kalpana Ajit Naik-Satam	)	
W/o accused no.1	)	
Both R/O B/39/001, RMS Sector	)	
Goregaon, Mumbai	)	..Respondents (Orig. Accused Nos.1 & 2)

Ms Anamika Malhotra APP for Appellant

CORAM : K.R.SHRIRAM, J.

DATE : 11th FEBRUARY 2020

ORAL JUDGMENT:-

1 This is an appeal impugning an order and judgment dated 18-1-2003 passed by the Special Judge, Thane, acquitting respondents (accused) of charges under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act 1988 (P.C. Act, 1988) and Section 109 of Indian Penal Code.

2 The accused are alleged to have accumulated assets disproportionate to their known sources of income during the period of their service. Accused no.1 was working as Inspector in Mumbai Agricultural Produce Marketing Committee, Mumbai (APMC). Accused

no.2, who is his wife, used to work as Accountant /Clerk in Indian Education Society, Mumbai, even prior to their marriage, which took place in the year 1985-86. Family background of accused no.1 is given in the impugned judgment that his father used to work in Central Railway. Accused no.1 had three brothers and one sister, who all were independently settled in their life.

3 Application was received from one Narayan V. Jadhav addressed to the Executive Director, Cidco, Belapur, Navi Mumbai, with a copy to Income Tax and CBI, alleging that accused no.1 has illegally acquired property and seeking an inquiry into the acquisition. It is alleged that the inquiry was made by the Inspector of ACB, Thane, pursuant to an order passed by the Director, ACB, Mumbai and according to the ACB Thane, the total assets that accused nos.1 and 2 had, both moveables and immoveables, was valued at about Rs.16,67,919.04. During the inquiry, it came to light that income by way of salary received by accused no.1 from 1-4-1977 to 12-12-1997 and the income by way of salary received by accused no.2 from March 1994 to November 1997 was totaling to Rs.11,62,053.90. It is not clear why the salary received by accused no.2 was restricted to March 1994 to November 1997, when accused no.2 has been employed from 1985-86. The expenses calculated as per the rules for the period 1-4-1977 to 12-12-1997 was coming to Rs.3,51,364.30. Therefore, after deduction of expenses, the assets, which were expected to remain with MMJ

accused nos.1 and 2, was Rs.8,10,689.60. But the assets found was worth Rs.16,67,919.04. Therefore, the allegation is the accused was in possession of assets of Rs.8,57,229.44, in excess of known source of income. The accused are unable to give any explanation and, therefore, are guilty of the offences charged.

4 The ACB then wrote to the Secretary APMC for sanction and sanction was granted by the Secretary Mr. Uddhav Mahajan (PW-1). Thereafter, charge sheet was submitted. Defence targeted the sanction accorded and stated that it was not sanctioned in accordance with law. Defence submitted that Mr. Mahajan was not the competent authority to remove accused no.1 from service and hence could not have issued the sanction. So far as accused no.2 is concerned, she is working somewhere else and as she is not in employment of APMC, Mumbai, and, therefore, Mr. Mahajan had no power to grant the sanction at all to prosecute accused no.2, who is the wife of accused no.1. In view of this, the Trial Court decided to examine the issue of sanction first and rightly so because, if the sanction has not been granted in accordance with law, there was no need to proceed further and the matter would be closed at that stage itself. Therefore, PW-1, who had accorded the sanction was examined first.

5 The Apex Court in ***Ghurey Lal Vs. State of U.P.***¹ has culled out the factors to be kept in mind by the Appellate Court while hearing an

¹ (2008) 10 SCC 450

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 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.

6 The Apex Court in many other judgments including ***Murlidhar & Ors. Vs. 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.

7 The Apex Court in ***Ramesh Babulal Doshi Vs. State of Gujarat***³

² (2014) 5 SCC 730

³ 1996 SCC (cri) 972

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.

8 I have perused the impugned judgment, considered the evidence and also heard Ms. Malhotra APP. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. Hence, there is no need to even reappraise the evidence in detail.

9 The sanctity of sanction has been considered and laid down by the Apex court in ***Balbadra Parashar vs. State of Madhya Pradesh***⁴. The Apex court held that grant of sanction is not empty formality and order of consent should not be construed in a pedantic manner and the purpose for which order of sanction is required to be passed should always be borne in mind, and there has to be application of mind in support of the sanction. Paras-5 & 6 read as under :-

"5. It is contended that the grant of sanction is not an empty formality and there has to be application of mind in support of the said sanction. We have been commended to Mansukhlal Vithaldas Chauhan v. State of Gujarat, 1997(4) R.C.R. (Criminal) 236 : (1997) 7 SCC 622 wherein a two-Judge Bench while dealing with grant of

4 AIR 2016 SC 1554

sanction has observed:-

"18. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority. (See also Jaswant Singh v. State of Punjab, AIR 1958 SC 124, and State of Bihar v. P.P. Sharma, 1991(2) S.C.T. 397 : 1992 Supp. (1) SCC 222.)

19. Since the validity of "sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution."

6. In State of Karnataka v. Ameerjan, 2007(4) R.C.R.(Criminal) 375 : 2007(5) Recent Apex Judgments (R.A.J.) 202 : (2007) 11 SCC 273, while dealing with the grant of sanction, it has been held thus:-

"9. We agree that an order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not.

10. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. We have noticed hereinbefore that the sanctioning authority had purported to pass the order of sanction solely on the

basis of the report made by the Inspector General of Police, Karnataka Lokayukta. Even the said report has not been brought on record. Thus, whether in the said report, either in the body thereof or by annexing therewith the relevant documents, IG Police, Karnataka Lokayukta had placed on record the materials collected on investigation of the matter which would prima facie establish existence of evidence in regard to the commission of the offence by the public servant concerned is not evident. Ordinarily, before passing an order of sanction, the entire 82 (2007) 11 SCC 273 records containing the materials collected against the accused should be placed before the sanctioning authority. In the event, the order of sanction does not indicate application of mind as (sic to) the materials placed before the said authority before the order of sanction was passed, the same may be produced before the court to show that such materials had in fact been produced."

10 The Apex court in ***State of Maharashtra Vs. Mahesh Jain***⁵ has held that grant of sanction is a sacrosanct act and is intended to provide safeguard to a public servant against frivolous and vexatious litigations. Grant of sanction is an administrative function and the sanctioning authority is required to prima facie, reach the satisfaction that relevant facts would constitute the offence. Satisfaction of the sanctioning authority is essential to validate an order granting sanction.

11 The Apex court in *Mahesh Jain (supra)* has referred to ***Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh***⁶ where the Apex court held "it is well settled that any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void, ab initio.

12 PW-1 in his cross-examination has admitted that as accused was not a Government servant, it was not necessary to grant the sanction under

5 (2013) 8 SCC 119

6 (1979) 4 SCC 172

Section 197 of Cr.P.C. PW-1 says that ACB, Directors, directed him to grant the sanction under Section 19(1)(b) and Section 197 of Cr.P.C. and he granted the sanction. PW-1 also says “ It is correct to say that I accept blindly the proposal sent by ACB Mumbai, Director. It is correct to say that I am wrong in granting the sanction u/s 19(1)(b) of the P.C.Act 1988 and 197 of Cr.P.C”. PW-1 also says that in the office noting which was placed before him he had made the endorsement that after consulting the legal consultant the matter be placed before the Board of Directors before according the sanction and that was never done. PW-1 also admits he is empowered only to carry out the resolution of the marketing committee and marketing committee has not passed any resolution to remove the accused from office. PW-1 also admits that accused no.1 was suspended and he was reinstated. PW-1 also admits that as per rules persons of APMC are not required to submit the returns of assets and liability. PW-1 also admits that he is not applied his mind as to whether accused was unable to give explanation for possession of disproportionate assets or whether any such explanation was given. PW-1 also admits that a letter was received from Sitaram Satam, father of accused no.1, which he had not seen and it appears that accused no.1 has given his explanation, and if that was available to PW-1, he would have applied his mind. Therefore, the sanction itself was void-ab-initio.

13 There are many more omissions, contradictions and lapses that
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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.

14 The Apex Court in ***Chandrappa & Ors. V/s. State of Karnataka***⁷ 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 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

7 (2007) 4 SCC 415

evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

15 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 they are proved guilty by a competent court of law. Secondly, the accused having secured acquittal, the presumption of their 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.

16 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.

17 Appeal dismissed.

(K.R.SHRIRAM,J)