

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1204 OF 2003**

The State of Maharashtra) ..Appellant

Versus

Meghraj Krushna Pujari	)	
Talathi Kabnur Saja, Tal: Hatkanangale	)	
Dist: Kolhapur.	)	
R/o Pulachi Shirol, Tal: Hatkanangale	)	
Dist Kolhapur,	)	
At present appointed as Asstt. Talathi,	)	
Shirol	)	..Respondent (Org. Accused)

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 17-5-2003 passed by learned Special Judge, Kolhapur, acquitting respondent (accused) of charges under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act 1988 (P.C.Act).

2 The facts in brief are that complainant – Sunil Alamkar (PW-1) had purchased two plots of land and wanted mutation entries be made and 7/12 extracts be given. Accordingly, PW-1 and his brother Anil Alamkar (PW-2) met accused, who was working as Talathi and requested him to issue

7/12 extracts. It seems, respondent informed PW-1 and PW-2 that he will do it provided Rs.200/- per plot of land, i.e., Rs.400/-, was paid as bribe. Complainant informed accused that he did not have that much money and he has only Rs.50/- and he gave Rs.50/-. The balance of Rs.350/-, was to be paid later. Complainant also gave necessary application to accused along with index-2 extracts on 18-6-1996. It seems, accused made some writing in one note book and put rubber stamp and gave one pink chit having written on it mutation entry no.23990 and 23991.

3 On 21-1-1996, complainant sent his friend to accused, to bring 7/12 extract. When complainant's friend, who is not named and who has not been examined, met accused, he was told to bring old 7/12 extract and pay all the previous dues. The friend came back and complainant gave him the old 7/12 extract and gave some money to him, who went back and met accused with old extract. The friend of complainant paid the arrears of Rs.16/- against which, accused gave receipt in the name of old owner and not in the name of complainant.

4 On 24-6-1996, at 12 noon, complainant again went to the office of accused and met accused. Complainant requested accused to give 7/12 extract urgently, but accused told him unless the amount of Rs.350/- bribe was paid, he will not issue 7/12 extract. As complainant did not have the money, accused called him again on 26-6-1996 with the amount of Rs.350/-. Same day, i.e., 24-6-1996, complainant met ACB Officer Mr.

Mirashi (PW.-6) at Ichalkaranji and narrated the grievance. A complaint was lodged, two panch witnesses were called from Irrigation Department and pre-trap panchnama was prepared. Thereafter on 26-6-1996, the raiding party followed complainant, panch witness (PW-3) and PW-2, to the office of accused. When they reached, accused was not there and after 15-20 minutes when they went back again, accused was busy doing some work with 5 to 6 persons present near him. Complainant asked accused about his work and accused asked him to bring blank forms of 7/12 extract from shop. Therefore, complainant, his brother and panch witnesses went to the grocery shop, purchased two blank forms and came back to the office of accused and delivered those forms to accused. Accused asked whether complainant had brought the chit which he had given and complainant handed over that chit to accused. As per the directions of accused, his assistant (Talathi Candidate) filled in those blank forms of 7/12 extract and delivered it back to accused. Accused then delivered 7/12 extract to complainant and asked whether he had brought the balance amount of Rs.350/-. Complainant answered in affirmative and accused asked him to come out of the office. Complainant, his brother – Anil and panch witnesses followed accused outside the office, where accused demanded the cash. PW-1- complainant took out the cash and gave it to accused, who accepted it by his right hand and kept it in left side chest pocket of his shirt and went back to his seat in the office. At that time, complainant gave signal to ACB

officer, who entered the Talathi office and caught both the wrists of accused. PW-6 – Mr. Mirashi, disclosed his identity to accused and asked him about the bribe amount. As per the instructions of PW-6, panch no.2 Mr. Kambale took out the money from the pocket of accused. Subsequently, post-trap panchnama was prepared based on further investigation and statements were recorded. ACB officer lodged complaint on behalf of State and after completion of investigation, papers were sent for sanction to prosecute accused. The Deputy Collector, Mr. Tukaram Powar (PW-5) accorded the sanction and after receipt of the sanction from competent authority, charge sheet was filed against accused.

5 Accused pleaded not guilty and claimed to be tried. His defence was of total denial. In his statement under Section 313 and as per his written statement under Section 233 of Cr.P.C., accused has stated that the application for entering the name was received from PW-1 on 11-6-1996 and not on 18-6-1996 and on the same day, mutation entry numbers were given to him. Complainant had wrongfully used his plots for industrial purpose and hence 40 times fine of Rs.641/-was imposed on him and accused personally went to serve the notice to complainant. Complainant refused to accept the notice and hence notice was affixed to that place by carrying out the panchnama dated 3-6-1996 and that record was sent to the office of Tahasildar. It is also stated by accused that he never met complainant on 18-6-1996 or 24-6-1996. According to accused, when complainant

demanded 7/12 extract on 26-6-1996, accused insisted that complainant pay the fine first. Complainant, it seems agreed and accused asked his assistant to prepare 7/12 extract. When accused asked complainant about the fine amount, complainant paid only Rs.350/-. Accused informed complainant that he cannot pass receipt unless complainant paid entire fine amount and then complainant requested accused that he will go out and bring the remaining amount from his brother. Accordingly, complainant went out and within a few minutes, members of ACB came and arrested accused. According to accused, the amount of Rs.350/- paid by complainant was not the bribe amount, but it was the fine amount.

6 The prosecution has placed reliance on oral and documentary evidence. The oral evidence consists of the statements of complainant Mr. Sunil Alamkar, as PW-1; his brother Mr. Anil Alamkar, as PW-2; Panch witness Mr. Gulab Devare, as PW-3; the circle officer Mr. Ashok Kambale, as PW-4; the sanctioning authority, Mr. Tukaram Powar, as PW-5 and the Investigating officer Mr. Govind Mirashi, as PW-6.

7 The Trial Court after considering the evidence acquitted accused on both merits as well as for defect in the sanction.

8 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 appeal against acquittal. Paragraph Nos.72 and 73 of the said judgment

1 (2008) 10 SCC 450

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.

9 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.

10 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

² (2014) 5 SCC 730

³ 1996 SCC (cri) 972

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.

11 I have perused the impugned judgment, considered the evidence and also heard Ms. Malhotra, learned APP. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. I am satisfied that the prosecution has failed in proving that there was a demand and acceptance also and that the sanction was not accorded in accordance with law.

12 I shall deal with the issue of sanction first. It is settled law that the sanction has to be accorded only by a person, who has appointed accused and who had power to remove him from service. Admittedly, in this case, accused was appointed by the Collector and the Collector only had the power to remove him. The sanction, however, has been accorded by Sub Divisional Officer (SDO), who was in the rank of Deputy Collector. It is also settled law that just because accused was working under the SDO / Deputy Collector, does not mean that he had the power of removal and he could have accorded the sanction. It is settled law that a public servant

cannot be dismissed or removed by the authority subordinate to the authority which posted him. I find support for this view in *Bhaurao Marotrao Manekar Vs. State of Maharashtra*⁴ and *Sakkharam Trymbak Patil Vs. State of Maharashtra*⁵. Therefore, on this ground alone, the appeal has to fail.

13 Secondly, even on merits, the evidence shows that first time complainant met accused was on 11-6-1996 and not on 18-6-1996. Prosecution's story is first demand by accused for bribe was on 18-6-1996, when complainant gave application for effecting mutation entries in his name in respect of plots purchased by him. The evidence shows the application was made on 11-6-1996. Therefore, the very basis of prosecution's story is shattered.

14 Thirdly, PW-1 says that when he went to Tahsildar office on 24-6-1996, his brother PW-2 – Anil, was not with him. PW-1 also does not disclose that his brother was with him when he approached the ACB, but PW-2 and PW-6 state that PW-2 was present when PW-1 approached the ACB on 24-6-1996. Therefore, that creates a doubt on the veracity and truthfulness of the evidence of PW-1. PW-1 says that he went to the Tahsildar office on 26-6-1996, there were many people around accused and his candidate assistant filled up the form of 7/12 extract. None of those have been examined and particularly the candidates.

4 1980 MhLJ 445

5 1993(1) BomCR 134

15 At the same time, PW-4, who is the circle officer, has admitted in his cross-examination that notice dated 3-6-1996 was issued by accused to complainant for recovery of penalty in respect of NA use and that notice is at Exhibit 31. That notice indicates that an amount of Rs.641/- was due from complainant as against the plots he purchased.

16 Accused denied he ever went out of the office to collect the bribe amount. Admittedly, there were 2/3 Talathi candidates sitting near accused to assist him and also there was a crowd. No independent witness is examined on the point whether, at the relevant time, accused had gone out of the office before he was trapped. The statement of Mr. Kambale the candidate Talathi is recorded by ACB, but he is not examined. Therefore, the vital part of the trap as well as facts prior to the trap, are not proved beyond reasonable doubt.

17 In my view, the presumption is rebuttable and the onus is on accused only to raise the probable defence. In similar provisions under Sections 118(a) and 139 of the Negotiable Instruments Act, the Apex Court in ***Basalingappa V/s. Mudibasappa***⁶ summarized the principles enumerated by the Apex Court in many matters dealing with presumption of liabilities. Paragraph 25 of the said judgment reads as under :

25. We having noticed the ratio laid down by this Court in above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:-

(i) Once the execution of cheque is admitted Section 139 of the Act

6 (2019) 5 SCC 418

mandates a presumption that the cheque was for the discharge of any debt or other liability.

(ii) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

(iv) That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

(v) It is not necessary for the accused to come in the witness box to support his defence.

18 Therefore, the standard of proof for rebutting the presumption is that of preponderance of probabilities and not beyond reasonable doubt. To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely. It is not necessary for accused to come in the witness box in support of his defence.

19 The Apex Court in ***Chandrappa & Ors. V/s. State of Karnataka***⁷ in paragraph 42 has laid down the general principles regarding powers of

7 (2007) 4 SCC 415

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

20 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.

21 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.

22 Appeal dismissed.

23 The 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. If during the service, in view of this matter, the promotions or increments of 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 accused and will factor in all promotions and increments that 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 respondent.

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.)