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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.69 OF 2010

The State of Maharashtra)
through Mr.Dayanand Harishchandra)
Dhome, Police Inspector, Anti Corruption)
Bureau, Pune)Appellant
(Org.Complainant)

V/s.

Satish Mahadeo Bharate)
Age-49 years, Occ. Service, R/a Rajapur)
Tal.Khatav, Dist. Satara)....Respondent
(Org.Accused)

Mrs.Anamika Malhotra APP for the State.
Mr.Shreeram Shirsat for respondent.

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

ORAL JUDGMENT :-

1. This is an appeal impugning an order and judgment dated 28.11.2008 passed by the Special Judge, Satara, acquitting respondent of the offences punishable under Sections 7 (*Public servant taking gratification other than legal remuneration in respect of an official act*) 13(1)(d) read with section 13(2) of the Prevention of Corruption Act 1988 (PC Act).

KJ

2. Respondent who was working as Assistant Sub-inspector at Khandala police station is accused of demanding illegal gratification of Rs.5,000/- from complainant Ramesh Pawar-PW-1.

3. The prosecution's case is that one Vinodkumar Palani who was driving a truck which was registered in Karnataka had met with an accident within the jurisdiction of Khandala police station. Respondent who was investigating the accident case, detained the truck driver Vinodkumar, along with the truck and its papers. Complainant PW-1 who was the manager of the transport company went to Khandala police station to request respondent to not charge the truck driver for any offence under Section 279 of the Indian Penal Code read with section 184 of the Motor Vehicles Act and requested respondent to release Vinodkumar and the truck. According to PW-1, truck contained goods of a company which had to be delivered urgently. At that time, the Senior Inspector who was present in the police station informed respondent to release the truck and allow Vinodkumar to go but retain the documents of the truck so that Vinodkumar would report on the following day. This was on 28.1.2007. It is also stated that truck did not have necessary permit to enter State of Maharashtra. When this discussion happened,

complainant PW-1 was accompanied by one Kailash Pawar and one John. Kailash Pawar is the owner of the company where complainant Ramesh Pawar works as an Accountant. Vinodkumar however, did not go back to Khandala police station the following day but instead was missing between 29.1.2007 to 12.2.2007. On 12.2.2007 respondent warned complainant that if Vinodkumar was not produced on the next day, he would take action against all persons concerned who had given an assurance on 28.1.2007 and Vinodkumar should report in the police station the following day.

4. A complaint came to be filed against accused on 13.2.2007 before the Anti Corruption Bureau. In the complaint it is stated that on 29.1.2007 respondent told Kailash Pawar and John that he has to be paid sum of Rs.10,000/-, which was reduced to Rs.5,000/- as bribe for returning the documents. It is stated that between 29.1.2007 and 13.2.2007 respondent kept calling complainant and was demanding the money. On 13.2.2007 after laying the trap and completing pre-trap formalities, complainant-PW-1 along with raiding party went to Khandala police station to meet respondent. Respondent was not there in the police station and complainant met one Mr.Muley who was the Constable available at the police station. Mr.Muley informed complainant that respondent had gone to Pune for some work and he

was waiting whole day for complainant to produce Vinodkumar. Muley thereafter contacted respondent over telephone and respondent is alleged to have informed Muley that he will come to police station in sometime and Vinodkumar should be retained in the police station. Despite that Vinodkumar was not kept in the police station and complainant left the place with Vinodkumar. Thereafter Kailash Pawar was in constant touch with respondent and finally it was decided that respondent would meet complainant at Khandala S.T.bus stand. At about 10.10 P.M. respondent met complainant at Khandala S.T.Bus stand. There, respondent came on a motor cycle and stopped near one of the platforms where complainant PW-1 along with panch witness Vasant Sapkal PW-2 met respondent and gave him the amount of Rs.5,000/-. We must note that this amount was given allegedly for returning the original documents of the truck. After giving the amount, complainant gave a signal as discussed and the raiding party started moving towards respondent. Respondent got alerted when he saw the raiding party and he immediately threw away the bribe money on the platform. Hands of Accused were caught by a Constable. Accused was sitting on the motor cycle with his one foot resting on the platform. Thereafter accused was told to get off the motor cycle and taken to a dark corner at the bus stand and his fingers were checked for anthracine mark. His fingers had traces of anthracine.

5. Based on that, investigation was commenced, statements recorded, FIR lodged, sanction obtained and charge-sheet was filed.

6. I have heard learned APP. With her assistance I have gone through the record & proceedings and the impugned judgment. Respondent is represented by Mr.Shirsat.

7. In order to bring home the guilt of accused, prosecution examined 6 witnesses, though in the list of witnesses they have named 13 witnesses. The six witnesses were Ramesh Pawar Complainant as PW-1; Vasant Sapkal, shadow panch witness as PW-2; Prakash Mutyal, the sanctioning authority as PW-3; Dayanand H.Dhome-Investigating officer who conducted the raid and prepared pre trap and post trap panchanamas as PW-4; one Naikawadi Fattulal Aziz, another Investigating Officer who filed charge-sheet as PW-5; and Laxman Mahadeo Borate, Dy.S.P. who also investigated the matter as PW-6.

8. There is nothing on record to indicate as to whether there were any other persons present in the S.T.Bus stand at the time of raid. No other independent witnesses have been examined. Moreover, the trial Court has also observed and rightly so that the

material witnesses Kailash Pawar who was allegedly in touch with accused when he made the demand of Rs.5,000/-, the 2nd panch Sharad who picked up the amount of Rs.5,000/- from the platform, the driver Vinodkumar whose truck had met with an accident and booked by accused, constable Muley who is Complainant and shadow panch had met at Khandala police station before the raid, Mohan More and John who had accompanied complainant when the demand of bribe was made, Sanjay Varma, the accountant of Kailash Pawar with whom accused allegedly was in constant touch and the constable who caught hands of respondent have not been examined. The platform was alleged to have been checked and anthracine traces were found from where the amount was picked up but there is no substantial evidence. Further when the bribe was allegedly taken and the amount thrown away when the raiding party approached, respondent was admittedly sitting on the motor cycle and after his hands were caught he was told to alight from the motor cycle and taken to a corner to check his hands at the dark but motor cycle handle has not been checked for traces of anthracine. Though learned APP stated it is not important, in my view it is very important because while getting off the motor cycle, respondent would certainly have touched the handle of the motor cycle and certainly some traces could have been found on the motor cycle handle.

9. Moreover, PW-2 Vasant Sapkal stated that anthracine marks were found on the finger tips and the pant pocket of the accused but PW-4 Dayanand H.Dhome who had led the raiding party states anthracine mark was found only on the finger tips. This is the major contradiction I have to note and the trouser of accused was not seized.

10. The entire case of the prosecution is that respondent demanded Rs.5,000/- to return the truck papers but when the raid took place respondent was not carrying the truck papers and PW-1 Ramesh Pawar admits that he did not ask for return of the truck papers. Moreover, between 29.1.2007 and 12.2.2007 accused had already registered FIR relating to the truck accident and driver Vinodkumar had presented before the Magistrate and pleaded guilty and paid fine of Rs.2,000/-. In such a case, the truck papers would have been either submitted to the Magistrate Court and the truck papers could have been obtained only from the Magistrate Court or from the police station and certainly not from respondent. Therefore, it is difficult to believe that respondent demanded Rs.5,000/- to return the papers. Moreover, nobody has come on record to say as to who was the owner of the truck. It is also a case of the prosecution that

Kailash Pawar was one who was negotiating with respondent and to whom the demand was made, but he does not lodge a complaint and does not give evidence. Instead his manager (PW-1) lodged the complaint and gave evidence. With this background, defence of respondent appears to be more plausible and it has to be noted that respondent has to only rebut on the basis of preponderance of probability. Defence of respondent is of total denial and a false implication due to grudge that PW-1 Ramesh Pawar had against respondent.

11. It is admitted that on 29.7.2007 when PW-1 went to Khandala police station he seems to have got into an argument with respondent and respondent is supposed to have insulted him and asked him to leave the police station. The station diary has also been produced in the evidence where this argument between PW-1 and respondent was recorded. It has also come in evidence that respondent and Police Constable Mule had insisted to keep Vinodkumar in police station to produce him before JMFC, Khandala, along with chargesheet and pay the fine on the very next day, i.e., 14.2.2007 which is the date of trap. The charge-sheet shows that on the date of the incident i.e., 28.1.2007 the truck did not have a valid permit to enter State of Maharashtra and Complainant and

Vinodkumar were trying to escape from police and judicial procedure. It is the case of respondent that he came to S.T. stand for taking Vinodkumar into custody, and that time PW-1 Ramesh Pawar tried to thrust the bribe amount into the hands of respondent while he was on his motor cycle. Respondent refused to take the money and the money fell down. Each of the witnesses have given a different story regarding demand and acceptance.

12. PW-2 Vasant Sapkal in his examination in chief has stated that bluish colour shining anthracine powder was found at the hands and pant pocket of respondent. PW-4 Dayanand H.Dhome, the raiding party Investigating officer states that bluish colour anthracine powder was found on the finger tips of right hand of respondent. It is also to be noted that PW-2 panch witness has acted as panch witness in other matters also. PW-2 also confirms that after Muley and respondent spoke over telephone, Muley did not mention about any demand of money by respondent. PW-2 also states that during the gap of 5 hours, i.e., between the time complainant and PW-2 went to the police station for the trap and the time when the trap was finally effected, no members from raiding party made contact with respondent. As against this, PW-4 Dayanand H.Dhome states that respondent was in constant touch with Sanjay Varma, the accountant

of Ramesh Pawar who has not been called to give evidence. In fact his name does not even appear in the list of witnesses. The 2nd panch witness Sharad who picked up the currency notes from the platform, has not been examined. It is also stated by PW-2 that many other articles were produced before PW-4 by respondent immediately after the raid but none of those articles were inspected. So also the handle and key of the motor cycle were not inspected. PW-2 has in his examination-in-chief stated that when he and PW-1 met respondent at the time of trap, respondent asked PW-1 whether he has carried the amount of bribe and PW-1 informed he had carried amount of Rs.5,000/- but in the cross-examination, PW-2 admits that the panchanama does not mention that respondent asked whether PW-1 had carried the amount and he has stated that for the first time in the court. In the cross-examination PW-2 states that he signed on the 1st and last page of panchanama whereas Exh.30 panchanama has signatures on all the pages. PW-4 says that when they inspected the spot where respondent had thrown amount of bribe under ultra violet lamp at that time bluish colour shining was noted on the said spot. PW-2 says he did not see anything like that happen after the trap was completed. PW-4 Investigating officer also admits that he never obtained any documents from complainant before recording his complaint, he did not make any inquiry with Khandala police station

in respect of motor accident, he has not collected any information of telephone conversation and he did not make any inquiry in respect of the owner of the truck. PW-4 also states after the trap when they all went to Khandala police station, there were 5/6 Police Constables present but he did not record statement of any of them. He also admits that he never contacted respondent on 13.2.2007 between 4.45 p.m. to 10.00 p.m. and Ramesh Pawar also did not contact respondent during the said period. He further states that Kailash Pawar the owner of the transport company which is different from the owner of the truck had accompanied the trap team through out but he has not been examined. PW-4 also admits that he did not even make enquiry whether the charge-sheet was ready in the accident case but admits that crime was pending against Vinodkumar at Khandala police station. Based on this kind of evidence, the trial Court correctly came to the conclusion that prosecution has failed to prove the guilt of respondent.

One further point has to be noted is that there was a power cut and the power was restored in the Khandala S.T.Bus stand only at about 10.00 p.m.

PW-5 Naikwadi Fattulal Aziz the other investigating officer admits that though the trap was laid at S.T.bus stand, Khandala, he has not recorded statement of any stall holder of S.T. stand and

further admits, that would have been the best piece of evidence.

13. PW-2 who is a habitual panch witness has stated that complaint was in handwriting and it was shown to him but on perusal of complaint Exh.25 it is a typed complaint, typed on a computer and not hand written.

The trial Court has also doubted the presence of PW-2 panch witness during the pre trap panchanama and has given various reasons why the Court doubts whether PW-2 was present when the panchanama was prepared.

PW-1 also admits that on 29.1.2007 when respondent handed over the vehicle along with the goods, respondent had told him that complaint has been lodged against Vinodkumar and therefore, he should produce Vinodkumar on the next day at Khandala Police station. He admits that he was accompanied by Sanjay Varma and John and there was an argument between them but Sanjay Varma and John have not been produced to give evidence. PW-1 also admits that there are cases pending against him in Pune Court.

14. Having considered the evidence, I agree with the trial Court that the evidence of complainant in respect of demand and acceptance of bribe by respondent cannot be relied upon and defence of

respondent is more probable that the amount fell on the platform when Complainant tried to thrust the amount into the hands of respondent. The motive for which the amount of bribe was demanded was for return of documents of the truck but the documents were not seized from the possession of respondent at the time of trap. From the perusal of the order of the JMFC passed on 17.7.2007, it is clear that driver Vinodkumar has appeared before JMFC on 14.7.2007 and is convicted of the offence.

15. 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

2. (2014) 5 SCC 730

3. 1996 SCC (cri) 972

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.

16. 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.

17. 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.

18. Appeal dismissed.

19. 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)