

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1386 OF 2003**

The State of Maharashtra	)Appellant/Complainant
V/s.	
Shoukat Abbas Maner	)
Age 49 years, Occu : Service,	)
R/o. Kini, Taluka – Hatkanangle,	)
District – Kolhapur	)Respondent/Accused

Ms. Anamika Malhotra, APP for State – Appellant.

CORAM : K.R.SHRIRAM, J.
DATE : 12th FEBRUARY 2020

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 30th July 2003 passed by the Special Judge, Kolhapur, acquitting accused of offences punishable under Section 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).

2 It is the case of prosecution that complainant's wife was working as a Peon in a school and she had applied in May 2000 for leave encashment of one month salary amounting to Rs.3,916/- that was not being given for a long time. Complainant (PW-1) – Madhukar Kisan Jadhav, therefore, contacted accused no.1, who was working as a Clerk in pay unit of office of Education Officer (Pay and G.P.F.). Complainant told accused that his wife was not getting her leave encashment pay and accused assured that the work will be done and complainant should come back within four days. After four days, again when complainant went and made enquiry, accused at that time

mentioned that complainant will have to pay a sum of Rs.200/- towards tea and miscellaneous expenses. On 16th April 2001, complainant met accused and accused again told complainant that the work will be done provided Rs.200/- was paid. Complainant, therefore, was satisfied that unless this amount was paid, accused will not do his work and decided to lodge a complaint with Anti Corruption Bureau office at Kolhapur. P.I. Manohar Koli, who is PW-3, took the complaint in writing and thereafter, pre-raiding formalities were completed and trap was laid.

3 On 18th April 2001, complainant and panch witness - Tanaji L. Bhise (PW-2) went to the office of accused and complainant greeted accused after identifying accused to PW-2. Complainant then enquired about his wife's leave encashment and accused told him that the work will be done and got up from the chair and invited complainant and PW-2 for tea. Three of them went to Sai Tea stall near the main gate of office where two cups of tea was ordered. Accused had one cup and the other cup was shared between complainant and PW-2. Accused thereafter, paid the bill of Rs.4/- for tea and when complainant again enquired about the leave encashment of his wife, accused asked him whether he has brought the amount as told. Complainant (PW-1) said he has and took out the amount from his left chest pocket with his right hand and held the same in front of accused. Accused accepted the amount in his left hand after which PW-1 gave signal to the raiding party who immediately rushed and caught hold of the wrist of accused. Subsequently, post raid panchnama was prepared. It is the case of

prosecution that accused was caught red handed. Subsequently, charges were framed and accused pleaded not guilty and claimed to be tried.

4 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 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;

1. (2008) 10 SCC 450

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. 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.

2. (2014) 5 SCC 730

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 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.

5 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.

6 In so far as the offence under Section 7 of PC Act is concerned, it is 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).

3. 1996 SCC (cri) 972

4. (2014) 13 SCC 55

7 A learned single Judge of this court in ***Khushalchand Yashwant Gaikwad V/s. The State of Maharashtra***⁵ also has held that it is well settled law that mere possession and recovery of currency notes without proof of demand will not bring home the offence under Section 7 since the demand of illegal gratification is *sine qua non* to constitute the offence. The same will also be conclusive in so far as offence under section 13 (1) (d) is concerned, as in the absence of any proof of demand of illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. It is only on the proof of acceptance of illegal gratification that presumption can be drawn under section 20 of the said Act that such gratification was received for doing or forbearing to do any official act. Unless there is proof of demand of illegal gratification, proof of acceptance will not follow.

Paragraph-12 of the said judgment reads as under :-

“It is well settled law that, mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7, since the demand of illegal gratification is sine-qua-non to constitute the said offence. The same also will be conclusive insofar as the offence under Section 13 (1)(d) is concerned as in the absence of any proof of demand for illegal gratification the use of corrupt or illegal means or abuse of position as to public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. It is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Prevention of Corruption Act that such gratification was received for doing or forbearing to do any official act. Unless there is proof of demand of illegal gratification proof of acceptance will not follow. Reliance is placed on (i) N.Sunkanna v. State of Andhra Pradesh; (ii) T.K.Ramesh Kumar v. State through Police Inspector Bangalore; (iii) Khaleel Ahmed v. State of Karnataka; ((iv) Suraj Mal v. The State (Delhi Administration); and (v) Sita Ram v. The State of Rajasthan.”

5. 2018 SCC Online Bom. 1073

8 Therefore, it is settled law that mere possession and recovery of currency notes without proof of demand will not bring home the offence under Section 7 since the demand of illegal gratification is *sine qua non* to constitute the offence.

9 The reason I have decided not to interfere in the impugned judgment is because PW-1 in his cross examination has admitted “It is true that the accused had never demanded the amount of Rs.200/- from me. I approached A.C.B. office on 17.4.2001 at 12 hours. A.C.O. Chougule, Koli, Nerle were present there in the office. Dy. S.P Chougule was the head of that office. But I had not spoken about my grievance to Chougule. My grievance was that pay of my wife was not drawn. I had lodged complaint as we did not get that pay” (emphasis supplied).

10 PW-2, who was the panch witness, in his cross examination, does not state that on the date of the incident there was a demand of illegal gratification by accused.

Apart from that, there are many other omissions and contradictions which have been listed in the impugned judgment.

11 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.

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, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

13 Appeal dismissed.

14 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.)