

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1446 OF 2003

The State of Maharashtra)....Appellant
(Org.Complainant)

V/s.

Prakash Nathu Pawar)
Assistant Sub-Inspector, Mumbra Police)
Station, Thane City, Commissioner of Police)
Office, Thane.)
R/o Vartaknagar Building No.57/B/2651)
II nd Floor, Pokhran Road No.1, Thane)Respondent
(Org.Accused)

Ms.Anamika Malhotra APP for appellant-State.
None for respondent.

CORAM : K.R.SHRIRAM,J
DATE : 13.2.2020

ORAL JUDGMENT:-

1. This is an appeal impugning an order and judgment dated 29.8.2003 passed by the Special Judge (Prevention of Corruption Act) Thane, acquitting respondent of offences punishable under Sections 7 (*Offence relating to public servant being bribed*), 13(1)(d) and 13(2) (*Criminal misconduct by a public servant*) of Prevention of Corruption Act 1988.

2. The prosecution's case in brief is that one Riyaz Ahmed Khan resident of Mumbra who is PW-1-complainant and carries on business at Kalwa, had applied for license of revolver/pistol on 2.9.2000. The application was sent to the office of Police Commissioner which ultimately came to Mumbra Police station for preliminary inquiry. The application was entrusted to accused for making inquiry. It is alleged that accused had recorded statement of PW-1 complainant and on the next date he called PW-1 to his office at Mumbra police station and demanded a sum of Rs.15,000/- for sending favourable report. PW-1 was told by accused that if this amount is not paid, the work could not be done and accused would send a report recommending refusal to issue license.

3. It is alleged that on 22.2.2001 accused called PW-1 Riyaz Khan to his office and informed him that his application for license was refused and further told him had he given amount of Rs.15,000/- that he had demanded, his application would have been allowed. Accused advised PW-1 to file an appeal in Mantralaya and also to file fresh application, and he would look into it. Therefore, in April-2001, PW-1 Riyaz Khan filed a fresh application with Police Commissioner Thane. Thereafter for 10 days before filing of the FIR, on 16.5.2001 accused called PW-1 informing him that his application had come to

him for inquiry and therefore, PW-1 went to accused and his statement was recorded by some constable and copies of documents were taken and PW-1 was allowed to go back. Two days later, accused once again called PW-1 to Mumbra police station and after some discussion told PW-1 that an amount of Rs.8000/- has to be paid which has to be handed over to his superiors and unless that is done, accused will not send a favourable report. Despite PW-1's request, accused refused to reduce the amount.

4. On 13.5.2001 at about 8.00 p.m. accused went to the office of PW-1 at Kalwa and inquired about payment of Rs.8000/- and when PW-1 informed accused that he has not been able to arrange amount of Rs.8000/-, accused asked him to meet him at his office on 16.5.2001 at 5.00 p.m. with Rs.8000/-. Accused also assured PW-1 that once the amount is paid, he would send a favourable report.

5. Realizing that unless the amount is paid, his application will not be considered, PW-1 decided to approach the office of Anti Corruption Bureau at Thane and lodged complaint (Exh.12) on 16.5.2001. Thereafter, Anti Corruption Bureau decided to lay a trap and pre trap formalities were completed.

6. On 16.5.2001 PW-1 and panch witness Dilip Murlidhar Adangale (PW-2) entered the office of accused while the raiding party was waiting outside scattered, and PW-1 once again requested accused to reduce the amount. Accused refused and then PW-1 took out amount of Rs.8000/- from his chest pocket and handed it over to accused. Accused accepted the amount with his right hand and counted the notes which were 16 of Rs.500/-. Then accused told PW-1 that he may leave. At which time, PW-1 went out and gave signal to the raiding party who came and caught accused red handed with the amount of Rs.8000/- which was in his hand. PW-1 is stated to have been lingering in the office of accused to keep a watch on him.

7. Thereafter the post trap panchanama was prepared and (PW-4)-Padmakar Juikar lodged a formal FIR (Exh.25). Before that supplementary statement of PW-1 was also recorded. Investigations were made and papers were submitted to the sanctioning authority and after getting sanction, accused was charge-sheeted for the above referred offences.

8. Accused pleaded not guilty and claimed to be tried. The stand of accused was of total denial.

9. In the statement under section 313 of Cr.P.C. accused has stated that because PW-1's 1st application for revolver license was rejected by the Senior PI Mr.Bapat, PW-1 thought it was rejected by accused and therefore, filed this false case.

10. I have to note that question no.21 in the statement of accused under section 313 of Cr.P.C. suggests that the bribe amount was found on the table of accused. Whereas the deposition states that the amount was in the hand of the accused.

11. To prove its case, prosecution led evidence of 4 witnesses as against 20 listed in the charge-sheet. These 4 are, complainant R.A.Khan as (PW-1); panch witness D.M.Adangale as (PW-2); Amnadas R.Verma, the sanctioning authority as (PW-3); and Padmakar Juikar, the Investigating officer as (PW-4).

12. It is one of the fundamental principles of criminal jurisprudence that an accused is presumed to be innocent till he is proved to be guilty. It is equally well settled that suspicion howsoever strong can never take the place of proof. There is indeed a long distance between the accused 'may have committed the offence' and 'must have committed the offence' which must be traversed by the

prosecution by adducing reliable and cogent evidence. Presumption of innocence has been recognized as a human right which cannot be wished away. This is what has been observed by the Apex court in ***Kailash Gour Vs. State of Assam***¹.

13. The Apex Court in ***Ghurey Lal Vs. State of U.P.***² 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 reappraise 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 (2012) 2 SCC 34

² (2008) 10 SCC 450

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.*

14. The Apex Court in many other judgments including ***Murlidhar Vs. State of Karnataka***³ 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,

³ (2014) 5 SCC 730

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.

15. The Apex Court in *Ramesh Babulal Doshi Vs. State of Gujarat*⁴ 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 reappraise the evidence and arrive at its own conclusions.

4 1996 SCC (cri) 972

16. Having perused the evidence, record & proceedings and the impugned judgment, I do not find anything wrong or erroneous in the impugned judgment that requires interference. I would add that I concur with the views expressed by the trial Court.

17. First of all, complainant has alleged that demand of Rs.15000/- was made when he had submitted his 1st application for revolver license in September-2000 but he does not lodge any complaint. In fact, PW-1 says that he was not even annoyed or felt bad about accused demanding the bribe amount. PW-1 further deposed that he was not knowing that demand made by accused was illegal, which is rather strange. This is because PW-1 claims to be a member of All India Anti Corruption and Social Reformation Committee since 2001 and also the President of Maharashtra State Committee, before which he was President of Thane District and as stated by PW-4, PW-1 also used to attend meeting of Peace Committee at Mumbra police station. PW-1 claims to be a social worker. With such a background it is impossible to believe that PW-1 did not know that the demand of Rs.15,000/- allegedly made by accused was illegal. Apart from that the demand is quite vague because it does not give any particular like date or month or location where demand was made. But in examination-in-chief, PW-1 says demand

made by accused was for Rs.2000/-. Therefore, there is a contradiction as regards the amount demanded by accused for the first time and that is a material contradiction.

18. Moreover, the silence of PW-1 for about six months after the first demand was made, also is not explained which makes it difficult to believe that there was a first demand of Rs.15,000/- as alleged by the prosecution.

19. The 2nd demand is supposed to have been made around 8.5.2001. PW-1 says that accused called him to the police station for 10 days and his statement was recorded by some constable and copies of documents were submitted to him. Two days later, PW-1 was again called by accused when he demanded Rs.8000/- for sending a favourable report. The first application has been rejected and it is PW-1's case that it was rejected because he did not pay the bribe amount of Rs.15,000/-. I ask myself in such a case when the 2nd application is being considered, why would the demand be reduced to Rs.8000/-? Further if accused has made a fresh demand of Rs.8000/-, PW-1 being a member of All India Anti Corruption and Social Reformation Committee, can be safely expected to have rushed to the office of Anti Corruption Bureau but he waited for 8 days. It is also on

record that after rejection of his 1st application, PW-1 had preferred an appeal. When the appeal was pending, why would he file a fresh application for the same purpose. With this background it does not inspire confidence on the 2nd demand also.

20. The 3rd demand is supposed to have been made around 13.5.2001 when accused went to the office of PW-1 and accused demanded Rs.8000/- and also directed PW-1 to come to his office at 5.00 p.m. on 16.5.2001. Accused as noted earlier claims to be a member of All India Anti Corruption and Social Reformation Committee and also used to attend meeting of the Peace committee headed by the Senior Police Inspector Mr.Bapat. PW-1 admits he never made any grievance to inspector Bapat who was in-charge of Mumbra police station at the relevant time. The evidence indicates that PW-1 was well acquainted with Inspector Bapat but still he chose to remain silent. Accused also had no powers to submit either favourable report or non favourable report relating to the application submitted by PW-1 for license of revolver. It is also on record that before the alleged 2nd & 3rd demand, statement of PW-1 was already recorded and he had submitted necessary documents but nothing had remained to be inquired. The reporting authority was inspector Bapat. Therefore, it is difficult to accept that a demand was made by accused

for the 3rd time.

21. We shall now come to the last demand when the trap was laid on 16.5.2001. In the Post trap panchanama, it is mentioned that complainant took out currency notes from his right chest pocket. Investigating officer tried to explain that it was a typing mistake and it should have been left pocket. If it was really a typing mistake, how does the words “right pocket” appear not only in the post trap panchanama but also in the FIR, statement of PW-2 Adangale recorded by Investigating officer, as well as statement of complainant (PW-1) recorded after the trap. In all these documents it is mentioned that PW-1 had taken the amount from his right pocket when the amount was allegedly handed over to accused. A plain typing mistake would not appear in 4 different documents. It is a circumstance which goes to the root of the case because the trap amount was kept in the left pocket of PW-1 complainant in the office of Anti Corruption Bureau from where they proceeded to lay a trap on 16.5.2001. If the amount was transferred from left pocket to right pocket of the shirt by PW-1 complainant, it is quite possible that the anthracine powder also would have got stuck to the right hand of the complainant PW-1. It is an admitted position that PW-1 & PW-2 when they reached the office of accused, they had shaken hands with

accused. Therefore, it could be natural to assume that traces of anthracine powder would have been transmitted from the hands of PW-1 to the hands of accused.

22. One more circumstance which makes it difficult to believe the story of prosecution regarding the theory of demand and acceptance, is according to PW-1 after he handed over the amount of Rs.8000/- to accused, accused counted the amount and thereafter told PW-1 to leave. The office of accused was 10 feet x 12 feet. PW-2 does not go out but according to PW-4 was lingering in the office of accused keeping a watch on him. Thereafter complainant came out of police station and gave a signal to raiding party and raiding party came to the spot and entered the premises where accused was sitting. This process must have taken few minutes. It has come in evidence that after raiding party entered the room of accused, Padmakar Juikar (PW-4) caught hold of both the hands of accused and according to prosecution amount of Rs.8000/- was still in the hands of accused at that time and PW-4 directed panch Pande to take away that amount from the hands of accused. It is reasonable to assume that few minutes have again passed and amount was taken away from the hands of accused. It does not, however, stand to reason that a person who has accepted a bribe of Rs.8000/- containing 16 notes, would still

keep that amount for such a long period in his hands. Normal conduct of a person accepting a bribe would be to either keep it in his pocket or in the drawer or elsewhere as early as possible. Moreover, accused is a police officer and he would have certainly realized when the raiding party rushed towards him that it was a trap and he would have tried to discard the notes. In any event, when the wrist of accused was caught, the normal reaction is to open the fist and notes will fall on the ground. This creates a doubt about the case of prosecution.

23. As against this, the case of defence is PW-1 was in habit to make complaint against public officers to pressurize them. From the cross-examination of PW-1 it indicates that his brother Mohamad Iazas Khan was prosecuted for murder and he was in jail for about 40 days though acquitted on 5.12.2002. PW-1 also admits that he has given a complaint to Anti Corruption Bureau, Thane, against Jailor. PW-1 also admits that he has given one complaint to Collector and Central Excise Department against owner of Chandni Bar & Restaurant. He also admits that he has filed complaint against Inspector Pathan of Mumbra Police station to the Commissioner of Police. PW-1 also admits that he withdrew his appeal against rejection of his 1st application because according to him, concerned person demanded lakhs of rupees as bribe and he has given application to Anti

Corruption Bureau, Thane, CBI, President, Lokaayukta etc. PW-1 also admits that one criminal case was pending against him in Ulhasnagar. In his evidence PW-1 has deposed that his monthly income was Rs.30,000/- but in his tax returns, he was showing Rs.60,000/- as his annual income. It makes me question the credibility of such a witness.

24. There are many other omissions which are recorded in the evidence of PW-1 and PW-4. I need not go into those details. Suffice it to say that no case has been made out by the appellant.

25. 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 observed that prosecution had failed to prove its case.

26. 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.

27. Appeal dismissed.

28. 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.

29. The way prosecution has gone about in this case shows that a course correction is required. The Apex Court in *State of Gujarat*

V/s. Kishanbhai and Ors.⁵ in paragraphs 22, 23, 24 and 25 has stated

as under :

22. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore, essential that every State should put in place a procedural mechanism, which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State, to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A standing committee of senior officers of the police and prosecution departments, should be vested with aforesaid responsibility. The consideration at the hands of the above committee, should be utilized for crystalizing mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course- content drawn from the above consideration. The same should also constitute course-content of refresher training programmes, for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials, should be vested in the same committee of senior officers referred to above. Judgments like the one in hand (depicting more than 10 glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course content will be reviewed by the above committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of Courts, and on the basis of experiences gained by the standing committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence, when they are made liable to suffer departmental action, for their lapses.

5. (2014) 5 SCC 108

23. *On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the concerned official may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.*

24. *A copy of the instant judgment shall be transmitted by the Registry of this Court, to the Home Secretaries of all State Governments and Union Territories, within one week. All the concerned Home Secretaries, shall ensure compliance of the directions recorded above. The records of consideration, in compliance with the above direction, shall be maintained.*

25. *We hope and trust the Home Department of the State of Gujarat, will identify the erring officers in the instant case, and will take appropriate departmental action against them, as may be considered appropriate, in accordance with law.*

30. Copy of this order be placed before the Director General of Police for information.

(K.R.SHRIRAM,J)