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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.339 OF 2009

The State of Maharashtra)
through, PI Chavani Police station)
(through A.C.B., Dhule))....Appellant
(Org.Complainant)

V/s.

Popat Bhivaji Katare)
Age-51 years, Tahsildar & Executive)
Magistrate, Malegaon Tahsil Office,)
R/O Nasik, Shakun Apartment, Anand Nagar)
Nashik Road-9, Nashik)....Respondent
(Org.Accused)

Mrs.Anamika Malhotra APP for State.
Dr.Uday Warunjikar for respondent

CORAM: K.R.SHRIRAM,J
DATE : 25.9.2020

ORAL JUDGMENT :-

1. This is an appeal impugning an order and judgment dated 29.9.2006 passed by the Special Judge at Malegaon acquitting respondent-accused for 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 Prevention of Corruption Act 1988 (PC Act).

2. Heard learned APP Mrs.Malhotra and with the assistance of the learned APP, went through the record & proceeding and impugned judgment. Since I was not satisfied with the merits of the matter, I did not even call upon Mr.Warunjikar to argue.

3. Complainant Premchand Vasantrao More PW-2 was running a grocery shop and also selling kerosene at village Kukane, Taluka Malegaon. The kerosene license was in the name of his father. Complainant used to get kerosene quota of 600 liters per month and that was supplied to complainant by one Kalantri who was a main dealer in Malegaon. In the month of March-2001 complainant PW-2 went to Kalantri to get his kerosene quota. At that time Manager of Kalantri disclosed to him that he has to verify his stock register by the Tahsildar and get the signature and seal of the Tahsildar, failing which no fresh supply will be given. Therefore, in April-2001 PW-2 went to accused and requested him to check his stock register.

4. It is the case of prosecution that accused refused to check saying he has no time and told PW-2 to come in the next month. On 9.5.2001 at about 5.00 p.m. PW-2 went to the accused and requested him to check the stock register. At that time accused demanded

Rs.700/- from PW-2 for checking and verifying stock register and to put his signature on the same. Complainant felt that demand was too much and tried to bargain but accused refused to reduce the demand amount. Accused further directed PW-2 to come to his office on 14.5.2001 with his stock register and promised to do the needful. Complainant thereafter went to A.C.B office at Dhule on 14.5.2001 where he met PW-3 Bhivsan Sonawane who was the Dy.S.P. at that time. Complainant narrated the entire story. PW-3 got the same typed and obtained signature of PW-2. Panch witnesses were called on the same day and pre raid formalities were completed. PW-2 along with PW-1 Shankar Maruti Pawar who was the panch witness met accused at his office where PW-2 submitted the register to accused for signature. Accused put the signature and returned the register to complainant. Thereafter accused asked PW-2 whether he has brought amount of Rs.700/- as agreed earlier. PW-2 removed the money from his pocket and handed it over to accused, who received the same with his right hand and put the same in his pant pocket. Thereafter complainant gave the agreed signal and raiding party caught accused red handed. This in short, is the story of prosecution.

5. To prove its case, prosecution led evidence of 4 witnesses, viz. PW-1 Shankar Maruti Pawar, the panch witness for the raid ; PW-

2 complainant Premchand Vasantrao More; PW-3 Bhivsan Daga Sonawane, Dy.S.P. who carried out the raid and also the investigation and PW-4 Punaji Kishanrao Javale, the sanctioning authority.

6. There is no dispute on the issue of sanction but interestingly PW-2 complainant himself turned hostile. Complainant's case was totally contrary to what the prosecution presented in as much as from the complainant's evidence it is clear that accused never made any demand of bribe either before filing of complaint with A.C.B or even on the date when raid was carried out. Complainant PW-2 categorically states that accused signed on the register and gave the register back to him and complainant kept the amount of Rs.700/- on the table of accused and came out of the office. PW-2 has specifically deposed that accused has not demanded any money from him. It was his case that some clerk had informed him that amount of Rs.700/- is to be paid if work has to be done but accused never met him and never asked him any money. In the cross-examination PW-2 admits that he has even objected to the name of accused being added in the complaint because accused never demanded any money. PW-2 has specifically deposed that he made complaint against supply department and not against accused but still PW-3 included the name of accused.

7. In the statement recorded under Section 313 of Cr.P.C. accused had stated in response to question no.29 that complainant used to sell kerosene in the black market and therefore, accused had instructed the supply department to make inquiry against the allegations of black marketing against PW-2 and on the instructions of accused, supply department started the inquiry and that is why PW-2 had a grievance against the supply department but wrongly included the name of accused. In fact, this statement of accused tallies with the evidence given by PW-2-the complainant.

8. Strangely PW-1 panch witness for the raid and PW-2 complainant state 15 days before the incident on 14.5.2001 A.C.B officer PW-3 had tried to raid accused but it was unsuccessful. Even on 14.5.2001 at 2.30 p.m. when they first went, the raid was unsuccessful. Of course, PW-3 has denied that any earlier raid before 15 days had been carried out. Therefore, there is material contradiction on this point and I see no reason why PW-1 and PW-2 should even mention this, which is contrary to the prosecution's case.

9. Learned APP submitted that even if complainant is declared hostile if the Court finds that the evidence of the panch witnesses or

the Investigating officer or other witnesses are more credible, the Court may still pass an order of conviction against accused.

10. I have considered the evidence of PW-1 and PW-3 and I see nothing which can convince me to reverse the order of acquittal. PW-1 who is an independent panch witness has admitted in his cross-examination that after entering the Tahsildar's office, PW-2 showed stock register to accused and asked accused to check and sign the register. PW-1 categorically has stated that it did not so happen that accused demanded money first and stated unless the money was given, he would not sign. PW-1 also states that as per the request of PW-2 accused signed on the register. Looking at this evidence of independent panch witness, it is evident that accused did not demand the illegal gratification of Rs.700/- from complainant PW-2. PW-2 has also testified that accused never demanded any bribe money from him.

11. Under these circumstances, mere finding of money with accused without any cogent evidence about the earlier demand cannot sustain the allegation that accused has accepted the money by way of illegal gratification.

12. Once the allegation regarding demand of bribe was proved

to be false, the allegation regarding payment of bribe and recovery of the same also would be viewed with suspicion. The very foundation of the case of the prosecution is shaken, in this case. It is found that no such demand was made by accused and the prosecution has given a false story in that regard, the Court will have to view allegation of payment of bribe with suspicion. This is exactly what the trial Court has done and I have no hesitation to agree with the view taken by the trial Court.

13. One more point which has to be noted is, PW-1 the panch witness has stated that complaint of PW-2 was in his own handwriting but the complaint filed in this case at Exh.31 is a typed complaint. This also raises a reasonable suspicion as to whether complaint was subsequently got typed. Of course, PW-3 has stated that he got the complaint typed subsequently to match with the version of the complaint orally stated by PW-2. Be that as it may, since the demand has not been proved and that prosecution's case was based on a false premise of demand, in a case of this nature the acceptance and recovery of tainted currency also raises suspicion.

14. The Apex Court in *Ghurey Lal V/s. State of U.P.*¹ has

1. (2008) 10 SCC 450

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.

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

2. (2014) 5 SCC 730

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 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.

15. 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

3. 1996 SCC (cri) 972

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.

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, need not be interfered with.

17. Appeal dismissed.

18. 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)