

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.732 OF 2007**

The State of Maharashtra)Appellant/Complainant

V/s.

1. Sunil Dharma Mane)

R/at. 151/1206, Motilal Nagar No.1,)

Goregaon (West), Mumbai – 400 104)

2. Shankar Bajrang Pol)

B. No.11111, Mahim Police Line No.4,)

Room No.9, First Floor, Mumbai – 400 016)Respondents/Accused

Mrs. Anamika Malhotra, APP for State – Appellant.

CORAM : K.R.SHRIRAM, J.

DATE : 14th SEPTEMBER 2020

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 20th September 2006 passed by the Special Judge, Kalyan, acquitting respondents (accused) of offences punishable under Section 7 (*Public servant taking gratification other than legal remuneration in respect of an official act*), Section 13 (1) (d) read with Section 13 (2) and Section 12 (*Punishment for abetment of offences defined in section 7 or 11*) of Prevention of Corruption Act, 1988 (PC Act).

2 Heard Mrs. Malhotra, for State in support of the appeal. None present for respondents though Mrs. Malhotra states they have been served. Considered the impugned judgment and notes of evidence with the assistance of Mrs. Malhotra.

3 Respondent no.1 at the material time was working as Police Sub Inspector (PSI) in CID, Crime Branch. Respondent no.2 was Police Constable.

The tainted money is allegedly accepted by respondent no.2 on behalf of respondent no.1. The order of acquittal is on the ground of invalid sanction as against respondent no.1 and also on the ground of failure of prosecution to prove the case of demand and acceptance beyond reasonable doubt.

4 Complainant - Satish Surve (PW-1), in the year 1999, alongwith one Subhash Kochrekar, as his partner, was carrying on business of supply of dumpers for mining activities. A dispute arose between Kochrekar and PW-1 after which it is alleged that Kochrekar approached the CID, crime branch office at Mumbai and lodged a complaint against PW-1 that PW-1 cheated him by stating the he was a doctor by profession and introduced himself to be the son in law of Shri Y. C. Pawar, Police Officer in Mumbai. Based on the complaint, PW-1 was taken to CID crime branch office on 19th June 2000 and was remanded to police custody for 10 days. During his police custody, a message was sent to wife of PW-1 – Sujata Satish Surve (PW-5) calling her to the crime branch office on 22nd June 2000. It is alleged that accused no.1 met PW-5 and demanded a bribe of Rs. 5 lakhs to discharge PW-1 from the offence registered against him at the instance of Subhash Kochrekar. It is stated that PW-5 negotiated the bribe amount and the amount was reduced to Rs. 3 Lakhs. It is also alleged that a sum of Rs.1,30,000/- was paid on 29th June 2000 by PW-5 to accused no.1 - PSI Mane. Thereafter, on 30th June 2000, a sum of Rs.30,000/- was paid to one Advocate Raju Sawant, who was the counsel appointed to defend PW-1 and the rest of the amount was paid in installments to the person as instructed by Raju Sawant. Incidentally, Raju

Sawant was not examined though 35 witnesses have been listed.

5 It seems the entire amount was paid to accused no.1 before PW-1 was released on bail on 4th July 2000. As PW-1 was not discharged inspite of paying huge bribe amounts, enquiry was made with Raju Sawant, who assured to get PW-1 discharged by an order of the Court very soon. PW-1 was again called in CID office by accused no.1 by sending accused no.2, Constable Pol, at the residence of PW-1. Accordingly on 9th January 2001, PW-1 came to the office of CID, where after making him wait for the full day at about 6.00 p.m., accused no.1 told PW-1 that as PW-1 had accepted money and alongwith PW-5 duped one Mukesh Sawant, PW-5, who is wife of PW-1, is also involved in a fresh case. It is alleged that accused no.1 demanded another Rs.50,000/- for not involving PW-1 and PW-5 in a complaint given by Mukesh Sawant. Accused no.1 agreed to receive the amount of Rs.50,000/- in installments and directed PW-1 to pay a sum of Rs.10,000/- immediately. Thereafter, accused no.2 was called to the office of PW-1 and was told that accused no.2 will have to come and collect the amount of Rs.10,000/- from PW-1. Accused no.2 and PW-1 decided the venue for paying over the money and also the date and time.

6 In view thereof, PW-1 approached the office of ACB and lodged the complaint on 12th January 2001. On 13th January 2001, PW-1 received a message over telephone from accused no.1 that accused no.2 will come on 14th January 2001 near horse carriage waiting stand (Tanga stand) to collect the money. Accordingly, on 14th January 2001, PW-1 approached ACB office

and his supplementary statement was recorded. Preliminaries for carrying out the raid was all made and as per the instructions, PW-1 was told to keep the marked currency totaling to Rs.5,000/- and to hand it over to accused no.2 as per the trap plan. As per the instructions given, PW-1 paid Rs.5,000/- to accused no.2, gave the required signal at which time the raiding party caught accused no.2 red handed. Post trap panchnama was prepared and after obtaining necessary sanction, charges came to be framed.

7 In order to establish the guilt of the accused, prosecution has examined 6 witnesses, viz., Satish Surve, complainant as PW-1, Kishore Kanoge, Shadow witness as PW-2, Shri M. N. Singh, Sanctioning Authority as PW-3, Chandrakant Waghchure, panch witness as PW-4, Sujata Satish Surve, wife of PW-1 as PW-5 and Suresh Dondiba Pawar, Investigating Officer as PW-6.

8 At the outset, I must say that the Trial Court has held that the sanction as against accused no.1 is not valid and proper as the same is not accorded by the competent authority. Hence, before dealing with prosecution case of demand and acceptance, let us first deal with the validity of the sanction. Section 19 (1) (c) of the Act which deals with previous sanction necessary for prosecution of an offence punishable under Section 7, 11, 13 and 15 alleged to have been committed by a public servant provides that no Court shall take cognizance of an offence punishable under these provisions alleged to have been committed by a public servant, except with the previous sanction of the authority competent to remove him from his office.

9 In the instant case, admittedly, the sanction to prosecute both the accused was accorded by PW-3, Shri M. N. Singh, the then Police Commissioner. In the cross examination of PW-3, the sanctioning authority, has admitted that he has no knowledge that accused no.1 was appointed by the Director General of Police (DGP) and he nowhere mentions in his testimony that accused no.1 was appointed by the Commissioner. Moreover, accused no.1 in his statement recorded under Section 313 has categorically stated that he is appointed by the DGP. It was the duty of the prosecution to produce some document on record to show that accused no.1 was not appointed by DGP so as to prove that the sanction is a valid sanction accorded by the competent authority when a specific ground was raised by the defence.

10 It is settled position of law that the authority competent to remove public servant from office is the authority competent to accord sanction for prosecution. As provided under Article 311 of Constitution of India, in case of a person holding a civil post, the removing authority should not be subordinate in rank to that by which he was appointed. In the instant case, as accused no.1 was appointed by DGP, who being superior in rank to PW-3, PW-3 was not competent to dismiss accused from service and hence not the competent authority to accord sanction. Thus I concur with the finding of the Trial Court that the sanction accorded by PW-3 as against accused no.1 is not a legal sanction and is without authority.

11 As far as accused no.2 is concerned, he was a Police Constable. The sanction in his case has been given validly by PW-3 but there is no evidence to prove that accused no.2 collected Rs.5,000/- from PW-1 knowing that it was an amount to be given to accused no.1 as bribe. This is clear from the evidence of Investigating Officer, i.e., PW-6. The prosecution relied on the evidence of two panch witnesses and of PW-1. In the cross examination, both panch witnesses have admitted that the conversation between PW-1 and accused no.2 was not clearly audible, which raises a doubt about the demand of any bribe amount by accused no.2. The Investigating Officer (PW-6) in his cross examination also states that he did not find any evidence that accused no.2 was aware about the purpose for which he was collecting the amount from PW-1.

12 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.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness'

1. (2008) 10 SCC 450

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

2. (2014) 5 SCC 730

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 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.

13 There is an acquittal and therefore, there is double presumption in favour of the 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, the accused having secured their acquittal,

3. 1996 SCC (cri) 972

the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting the accused, the Trial Court rightly observed that the prosecution had failed to prove its case.

14 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.

15 Appeal dismissed.

16 The Government/Appropriate Authority shall pay over to respondents, 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 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.

Gauri A.
Gaekwad

Digitally signed
by Gauri A.
Gaekwad
Date:
2020.09.15
17:01:59 +0530

(K.R. SHRIRAM, J.)