

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1049 OF 2004**

The State of Maharashtra	)	..Appellant (Orig. Complainant)
Versus		
Maruti Gunaji Kalyankar	)	
Age 47 yrs., Occ Service (suspended)	)	
R/o Risala Bazar, Hingoli,	)	
Tal Hingoli, Dist Hingoli	)	..Respondent (Orig. Accused)

Ms Anamika Malhotra APP for Appellant

Mr. Ujwal R. Agandsurve i/b Mr. B. R. Patil for Respondent

CORAM : K.R.SHRIRAM, J.

DATE : 25th FEBRUARY 2020

ORAL JUDGMENT. :

1 This is an appeal impugning an order and judgment dated 31-05-2004, passed by the Special Judge, Raigad-Alibag, acquitting respondent (accused) of the offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of Prevention of Corruption Act 1988 (P.C. Act 1988).

2 At the relevant time, complainant – Kamraj Narayan Jambhale (PW-1) was an unemployed educated youth and in the scheme of the Government, was entitled to some loan as seed money through District Industries Center (DIC). As complainant (PW-1) had decided to buy a taxi / tourist car, he approached Mahad Co-operative Urban Bank, branch at Panvel, for loan. Mahad Co-operative Urban Bank was giving 75% of the loan amount, 15% was to be given through DIC and the balance 10% was to be invested by complainant himself.

3 It is the case of prosecution that when complainant went to DIC to make inquiries regarding the procedure followed while applying for seed money loan, he came across accused, who said it can be done provided a sum of Rs.5000/- was given to him as bribe. This was in July 1996 and much before the loan application was made. It is prosecution's case, when complainant met accused around 15-8-1997, accused demanded Rs.2000/- as bribe. In the meanwhile, the loan application to DIC was lodged on 9-4-1997. On 15-8-1997, complainant and many others were to get the Demand Draft of seed money loan and complainant had also received a letter to that effect. But on 15-8-1997, everybody else got the seed money Demand Draft, except complainant. So when complainant approached accused once again on the same date, accused told him that he has not paid the bribe amount, which has by then reduced to Rs.2000/-. Subsequently, accused handed over the seed money cheque to complainant, but when complainant deposited the cheque, Mahad Co-operative Urban Bank did not accept the cheque because the cheque was not accompanied with a sanction / forwarding letter from DIC. So complainant once again met accused and he was told that he was yet to pay the balance amount and the letter would be given only if that amount was paid. This happened for sometime and finally, on or about 18-9-1997, complainant decided to lodge a complaint with ACB, Alibaug, because accused had informed him that on 19-9-1997, accused would go to chicken center at Alibaug, where complainant was

working, to collect the amount of Rs.500/- and also hand over the cheque with the relevant forwarding letter. After complaint was noted by PW-4- Investigating officer, a pre-trap panchnama was prepared and it was decided to lay a trap on 19-9-1997. The raiding party went to the chicken center, where complainant was working. Plan was to nab accused at the chicken center while accepting Rs.500/- as bribe. I must say, there are lot of lose ends and with great difficulty, I have also tried to join those lose ends. It is stated that, when accused reached the chicken center, complainant asked him about the sanction letter and the pay order and accused asked about the bribe amount of Rs.500/-. Complainant paid over the amount by taking it out with his right hand from his left pocket and gave it to accused, who collected it with his right hand and put it in his right side pant pocket. Immediately, the agreed signal was given and the entire raiding party, including PW-1 rushed towards accused and the Investigating Officer (PW-4) caught accused with both wrists. At that point, accused panicked and dropped the amount on the ground. The other panch witness picked up the amount and then bribe amount as well as fingers of accused were examined under a torch. Thereafter, accused was taken to a dispensary of Dr. Dawara near the chicken center and post trap panchanama was prepared there. Investigation commenced and the Investigating Officer applied for sanction to prosecute accused. Sanction was given and charge sheet was filed. Accused pleaded not guilty and claimed to be tried. In the defence,

accused has stated that after the Investigating Officer held his wrists, complainant tried to thrust the money into his pocket and when he pushed complainant, the amount fell down.

4 Prosecution, in the charge sheet, has listed 21 witnesses but examined only 4 witnesses, namely, Jayprakash Narayan Jambhale-Complainant, as PW-1; Santosh Laxman Patil, panch witness, as PW-2; Medha, as PW-3 and Bhaskar Kashinath Mhatre, Police Inspector, ACB-Alibaug, as PW-4. Defence also led evidence of one witness Jayprakash Pundlik Sawant, who was present with accused at the time when the alleged trap was led.

5 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 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'

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.

& Ors. Vs. State of Karnataka² 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.

7 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.

8 I have perused the impugned judgment, considered the

2 (2014) 5 SCC 730

3 1996 SCC (cri) 972

evidence and also heard Ms. Malhotra, learned APP and Mr. Agandsurve for respondent. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment in its consideration on the merits of the case.

9 The entire case of prosecution, I am unable to believe. It is true that complainant had applied for seed money loan to DIC and for 75% of loan from Mahad Co-operative Urban Bank. There have been no witness to any demands made by accused. The evidence of PW-1 is also not believable because PW-1 says after accused was caught by Investigating Officer (PW-4) his hands were checked with torch. PW-2, who is panch witness says that hands of accused were checked with ultra violet lamp. PW-1 says that after the money was received by accused, panch witnesses rushed unto him and PW-2 was standing by his side. PW-1 says that PW-4 and Dy. S.P. Mr. Adhe, who was standing at some distance, rushed towards his stall and immediately accused threw the bribe amount out of his pocket, however, accused was caught by PW-4 and Dy.S.P. Mr. Adhe. We have to note that Mr. Adhe, who was the Dy. S.P., would have been the best witness considering his position, but he has not been examined. PW-2 says once the signal was given, Mr. Mhatre (PW-4), his raiding party and another pancha rushed to the scene and Mr. Mhatre caught accused by his hands and thereafter, accused threw away the bribe amount. PW-1 is silent about Dy. S.P. Mr. Adhe. At the same time, if the wrists of accused were caught hold by PW-4,

how come accused could have put his hand in the pocket and throw the bribe amount. PW-2 says that hands of accused were checked under ultra violet lamp, whereas PW-1 says torch was used. Moreover, what really goes against the case of prosecution is that PW-1 himself admits that on 31-5-1997 itself, DIC had sanctioned his proposal and the sanction letter was also issued, which PW-1 had submitted to the Bank after retaining xerox copy with him. PW-1 says that sanction letter dated 31-5-1997 was submitted to the bank on the same day and the bank also by its order dated 2-6-1997 sanctioned 75% of the car loan to him. PW-1 also admits in his cross-examination that on 5-8-1997 he executed Deed of Hypothecation of purchased vehicle on Rs.100 stamp paper because he was told by General Manager, DIC that he would not get the loan amount until he executed the Deed of Hypothecation in respect of the vehicle. PW-1 says that Deed of Hypothecation was executed on 15-7-1997, and 5-8-1997 is the date, on which, the certified copy of the same was also obtained.

10 Therefore, there is nothing on record that indicates that any work was to be even done at the level of accused, for which, any bribe had to be paid, because the sanction and the amount had already be given earlier. PW-1 admits that the residence of accused was ½ km away from his chicken center and the road to DIC office at Panvel from the residence of accused goes through his chicken center. At this point, we will consider the evidence of DW-1 – Jayprakash Pundlik Sawant, who says he was traveling

in a share auto rickshaw with accused and when they were passing the chicken center of complainant, complainant called accused and they exchanged some words, accused alighted and there was some sort of scuffle between accused and complainant. DW-1 also says that police in plain dress appeared at the scene and some currency notes were also seen dropping at the spot.

11 There are many other such contradictions and lacunas mentioned in the impugned judgment, which for the sake of brevity I do not wish to reproduce it again. The observations of the Trial Court has my approval. The prosecution's case against accused has to fail.

12 There is an acquittal and therefore, there is double presumption in favour of the 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.

13 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.

14 Appeal dismissed.

15 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 judgment. Certified copy expedited.

(K.R. SHRIRAM, J.)