

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.950 OF 2008**

The State of Maharashtra)
(through Dy. Superintendent of Police)
Anti Corruption Bureau,)
Raigad-Alibaug)Appellant

V/s.

Shubhangi Shekhar Dhumal @ Mhatre)
Age 45 years, Occu: Service)
R/at Sahakari Griha Nirman ,)
Housing Society, Sector No.2,)
Plot No.3, Navi Panvel,)
Taluka Panvel, District Raigad)Respondent

Ms Anamika Malhotra, APP for State
Mr. V. S. Talkute for Respondent

**CORAM : K.R.SHRIRAM, J.
DATED : 21st SEPTEMBER 2020**

ORAL JUDGMENT :

1 This is an appeal impugning judgment and order dated 27-11-2007 passed by the Special Judge, Raigad-Alibag, acquitting accused of an offence punishable under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act 1988.

2 It is the case of prosecution that accused was working as a Sheristedar in the office of Special Land Acquisition Officer, (SLAO), Metro Center No.1, New Panvel, Dist Raigad, in September 2004, when Shri Suresh Dharma Patil complainant (PW.-1) went to the office of accused and submitted on 29-9-2004 an application for getting certified copies of documents in respect

of agricultural land bearing Gat nos.203, 204, 102, 103 situated at Navade, standing in the name of his father Shri Dharma Ganpat Patil and others, which was acquired by the Government of Maharashtra for CIDCO in the year 1970 and in respect of which 12.5% developed plot per Hectare was being given by CIDCO. It is alleged that accused demanded an amount of Rs.5000/- for giving certified copies and asked him to bring the amount to the office on 30-9-2004. Accordingly, a trap was laid and accused was caught red handed.

3 Based on the trap, according to the prosecution, accused was caught red handed on 30-9-2004. A complaint was filed and after obtaining sanction for prosecution from witness no.3 Collector, Mr. Bhaskar Yadavrao Wankhade, who was the then Collector of Raigad District, an offence was registered. The stand of accused in the statement filed alongwith Section 313 of CrPC is that earlier one Mr. D. K. Patil, Junior Clerk was doing the work of furnishing certified copies and Mr. D. K. Patil was related to complainant. As documents were missing, Mr. D. K. Patil was removed and accused was told to do that job of providing certified copies. Accused has stated that on 14-9-2004 also complainant had submitted an application for obtaining certified copies of 11 properties, which were provided on 28-9-2004 and fee of Rs.500/- was deposited and receipt for the same was issued by accused. Thereafter on 29-9-2004, P.W.-1 submitted one more application for 6 properties. On that date, complainant had not met accused, and therefore, the question of demanding any bribe would not

arise. It is also stated on 30-9-2004 complainant gave Rs.200/- towards certified copy fee of Rs.130 and accused returned Rs.70 and also gave him the receipt. At that time, a peon in the office, one Gangubai Mhatre, told accused that there was a telephone call and accused went to the cabin of the SLAO and when she returned to her table, Deputy Superintendent of Police Mr. Juikar(P.W.-4), Panch witness-Smt. Jayshree Pitambar Bhole (P.W.-2) and complainant (P.W.-1) were present. At that time P.W.-4 asked accused whether she took any money from P.W.-1, to which accused replied in the negative. Thereafter, P.W.-4 asked accused to hand over the certified copies to complainant, who affixed the signature on the rear side of receipt, in acknowledgment of receiving copies. At that time, a bundle of currency notes was seen in the open drawer of accused and P.W.-4 asked accused to take it out and at that time the powder might have got rubbed on the hands of accused while taking the same out.

4 Subsequently, after hearing the prosecution and defence counsel, charges were framed. Prosecution led evidence of 5 witnesses namely, Mr. Suresh Dharma Patil – complainant as P.W.-1, Dr. Jayshree Bhole – Panch Witness No.1 as P.W.-2, Mr. Bhaskar Yadavrao Wankhede, the then Collector of Raigad District as P.W.-3, Mr. Gajanan Goswami Juikar, the officer who laid the trap as P.W.-4 and Mr. Vyankat Bhanudas Patil, Investigating Officer as P.W.-5. No other employee in the office of SLAO has been called to give evidence.

5 After considering the evidence, the Trial Court has acquitted accused

on the basis that prosecution has failed to prove the charges beyond reasonable doubt. I have no reason to disagree with the Trial Court.

6 PW.-1-complainant in his evidence says that he went to the office of accused for the first time on 29-9-2004 and he told accused that he wanted certified copies of originals. In his evidence, PW.-1 says that his ancestral land had been acquired by CIDCO in the year 1970, but as compensation received was less, his father had filed the suit in the Civil Court for getting the enhanced compensation and for that purpose he wanted certified copies of award, possession receipt etc. But strangely, he did not have any details of about the so called civil proceedings. Admittedly, PW.-1 is a builder. Moreover, PW-1 has stated he went to the office of accused for the first time on 29-9-2004, whereas, it has come on record that PW-1 had gone to the office of accused and has applied for certified copies relating to 11 other properties on 14-9-2004 and he has obtained certified copies on 28-9-2004. PW-1 does not say even at that time accused had demanded illegal gratification or that he paid or refused to pay. Then why did PW.-1 say he went to the office of accused for the first time, is a mystery. But one thing is certain that complainant cannot be trusted. Moreover, it is the case of prosecution that certified copies relating to agricultural lands bearing survey nos.203, 204, 102, 103 were sought for, but when the original application was seen, the same is for agricultural lands bearing survey nos.203. 204, 102, 103, 246/8 and 246/4. In the cross-examination, PW.-1 says he had given application for getting certified copies in respect of only 4 survey

numbers. If that was so, how did the original application contain two more survey numbers ? P.W.-1 also states that the fee for certified copies was Rs.130/-. How did he know before any trap itself that the amount of fee was Rs.130 ? The SLAO office did not have a xerox machine and the photocopy was to be made from outside, then naturally the charges for the photocopies for issuance of certified copies can be calculated only after it is made. Moreover, prosecution's case is that during pre-trap panchnama 55 notes of Rs.100/-denomination each, were with complainant. 50 notes of Rs.100 (Rs.5000/-) to be given as bribe plus Rs.500 to be used for paying for certified copy charges. This means that complainant could have paid Rs.130 by using only 2 x Rs.100/- notes and would have got back Rs.70 as stated by accused. But panch witness and complainant are totally silent about paying Rs.200/- and getting Rs.70 back in change. Prosecution has nowhere mentioned that complainant had exact amount of Rs.130/- and he took out Rs.130 separately and handed the same over to accused. I agree with the Trial Court that it was necessary to have mentioned in the panchnama Exhibit-20 the fact that complainant gave two currency notes of Rs.100/- denomination to accused and accused returned Rs.70/- back to complainant.

7 Complainant states that he gave Rs.130/- to accused, but then why he did not ask for the certified copies. No explanation has been given as to why complainant did not even enquire about his work that is providing of certified copies being done. Strangely, complainant states that after paying

Rs.130/- and obtaining receipt he got out of chair without taking certified copies and told accused that he was leaving.

In the statement of accused, it is mentioned that one Gangubai Mhatre informed accused about the telephone call and accused went to the cabin of SLAO to answer the call. Gangubai Mhatre has not been called to give evidence by prosecution. Therefore, considering these facts and circumstances, the Trial Court came to the conclusion that the evidence of complainant was unreliable. It is also possible that when accused returned to her table after answering the call PW-4 told accused to pick up the currency notes from drawer and at that time some anthracene powder might have got rubbed on the fingers of accused. The defence raised by accused cannot be discarded. In my view, prosecution has not proved that on 29-9-2004 accused had demanded a bribe of Rs.5000/- from complainant for giving certified copies and accepted the amount on 30-9-2004.

8 Ms Malhotra submitted that the defence should have produced Gangubai Mhatre as defence witness. Mr. Talkute states that the need to bring Gangubai Mhatre as defence witness did not arise because prosecution has failed to prove the demand. According to prosecution, demand was made on 29-9-2004 and the amount was paid on 30-9-2004. PW.-1 states that he went to the office of accused for the first time on 29-9-2004 for obtaining certified copies and prior to that he had never been there. If PW.-1 had gone to the office of accused for the first time only on 29-9-2004, then it means that prior to that accused might not have even

seen him and complainant also would not have seen accused ever before. If that is so, it seems difficult to believe that accused would demand Rs.5000/- for certified copies from complainant or even complainant would give or would become ready to give Rs.5000/- easily.

9 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 again. The observations of the Trial Court has my approval. The prosecution's case against accused has to fail.

10 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' 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

1. (2008) 10 SCC 450

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

2. (2014) 5 SCC 730

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.

10 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

3. 1996 SCC (cri) 972

strengthened by the trial court. For acquitting accused, the Trial Court rightly observed that the prosecution had failed to prove its case.

11 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.

12 Appeal dismissed.

13 The Government/Appropriate Authority shall pay over to respondent, within a period of 30 days of respondent forwarding 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 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.

Meera
M.
Jadhav

Digitally signed
by Meera M.
Jadhav
Date: 2020.09.22
16:14:33 +0530

(K.R. SHRIRAM, J.)