

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.857 OF 2006**

The State of Maharashtra
(Through Dy. S.P. Anti Corruption Bureau
Satara)

....Appellant/Complainant

V/s.

Rajendra Shankar Bhoite
Age 41 years, Occupation : Ex-Police
Patil and agricultural resident of Kodoli,
Taluka and District - Satara

.....Respondent/accused

Mrs. Anamika Malhotra, APP for State – Appellant.
Mr. Sushil K. Chaurasia i/b. Adv. S.N. Raj for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 6th NOVEMBER 2020

ORAL JUDGMENT :

1 This is an appeal filed by the State impugning an order and judgment dated 6th November 2004 passed by the Special Judge under the Prevention of Corruption Act at Satara, acquitting respondent (accused) of offences punishable under Section 7 (*Public servant taking gratification other than legal remuneration in respect of an official act*), 8 (*Taking gratification, in order, by corrupt or illegal means, to influence public servant*), 9 (*Taking gratification, for exercise of personal influence with public servant*) and Section 13 (1) (d) read with Section 13 (2) of Prevention of Corruption Act, 1988 (PC Act).

2 It is prosecution's case that one Shashikant Suresh Pawar, complainant, who was residing at Village Kodol, Taluka and District Satara, when he was standing near Bank of Maharashtra, Kodol, one Ashok Jadhav from their village appeared there drunk and had an altercation with PW-1. It

seems Ashok Jadhav even bit the neck of PW-1 and when PW-1 went to the house of Ashok Jadhav to complain about the incident, Ashok Jadhav hit complainant with an axe on the head. PW-1 blocked the swing which resulted in he suffering injury in his hand. PW-1 reported the incident to the Police Station at Satara City and some action was taken against Ashok Jadhav. About three days later, the Police Patil of their village Rajendra Bhoite (accused) met PW-1 complainant and told him that Police is going to file a chapter case against complainant and if he gives Rs.1,000/-, the matter will be settled. Complainant informed accused that he did not have that much money and gave him Rs.300/-. After a fortnight, accused met PW-1 again and demanded the balance amount. As PW-1 did not have money with him, he gave accused another Rs.300/-. On 5th November 2002 at about 6.30 p.m. when complainant was sitting near a pan shop, opposite Bank of Maharashtra, accused came and asked about the balance amount. Complainant informed him that he will give Rs.200/- on 8th November 2002 and remaining amount thereafter. On 7th November 2002, complainant approached A.C.B. Satara.

3 Police Inspector A.C.B. Satara V.G. Gurav (PW-4) took down the complaint, arranged for panch witnesses, trap etc. and on 8th November 2002, laid the trap. When complainant and PW-2, the shadow panch reached the residence of accused, he was not at home. As they waited outside, accused came and was carrying a bundle of fodder on his head. Accused placed the load of fodder in the cattle-shed and asked complainant whether

he has brought the money. Complainant answered in the affirmative and accused inquired about the shadow panch. Complainant stated that he was his relative. Thereafter, accused extended his hand saying "give the money". Complainant took the marked currency from his left side chest pocket of his shirt and gave it to accused, who accepted with right hand and kept them in the right side chest pocket of his safari suit. Thereafter, accused informed complainant that he need not worry about the chapter case. The pre-arranged signal was given by complainant to the raiding team, who caught accused red handed. When accused was examined, anthracene powder marks were found on the fingertips and the detailed report of the incident was taken. Detailed post trap panchnama was prepared, investigation was lodged, sanctions obtained and charges were framed.

4 To drive home the charge, four witnesses were examined, viz., Shashikant Suresh Pawar, complainant as PW-1; Dipak Kisan Wanjari, shadow panch as PW-2; Nandkumar Babanrao Patkar, the Sanctioning Authority as PW-3 and Vijaykumar Ganpatrao Gurav, A.C.B. Inspector who had conducted raid and investigated as PW-4. Statement of accused was also recorded under Section 313 of the Code of Criminal Procedure in which accused took the defence of denial and also given a statement in writing about local village politics. Accused also stated that the A.C.B. Officer asked PW-1 to insert the currency notes of Rs.200/- on the right side pocket of his safari suit, he brushed aside the hand of complainant, taken out the currency notes and threw them down. Accused further stated that accused had no

power to file or compound a chapter case, so how could accused have told complainant that he will not file the chapter case if Rs.1,000/- bribe was given.

5 At the outset, I have to note that there is no evidence whatsoever for offences under Section 7, 8 and 9. I wonder why these sections were added in the first place.

6 In the complaint, PW-1 states that about 3 months prior to 7th November 2002, in the evening when PW-1 was standing near Bank of Maharashtra, one Ashok Jadhav had come there and after some altercation bit his neck. When he had gone to the house of Ashok Jadhav to tell the incident, Ashok Jadhav assaulted him with an axe. PW-1 reported the matter to Police Station, Satara City and action was taken against Ashok Jadhav by the Police. It was three days after this incident that accused met complainant and informed him that a chapter case was going to be filed against him and if he gave Rs.1,000/-, the matter will be settled.

But when PW-1 enters the witness box, PW-1 says about one month prior to the date of complaint, which was 7th November 2002 (that is the first week of October 2002), he had gone to MIDC Police Station, Satara and told them about the biting incident. PW-1 has deposed that accused, who was Police Patil, informed PW-1 that accused will tell Ashok Jadhav to lodge a complaint to commence chapter proceedings against complainant. PW-1 has further deposed that accused told him to give Rs.1,000/- and the matter will be settled. In his cross examination, PW-1 states that he went to

MIDC Police Station for giving the report but Police has not accepted his report but instead he was beaten up on the instigation by accused. But these are not mentioned anywhere in his complaint, which is a major omission. This also shows a vast contradiction or difference between the two versions. Moreover, a few days here and there in the dates are understandable but more than two months difference is very difficult to accept.

7 PW-1 in the complaint stated that accused told him that Police are going to file chapter case against him and if he gave Rs.1,000/-, the matter will be settled. In his deposition, complainant does not say this but states that accused told him that he will tell Ashok Jadhav to give a complaint for filing chapter case against him and only thereafter, accused made a demand of Rs.1,000/-. The essential ingredient contemplated by Section 8 and 9 under the PC Act is that accused must induce a public servant by corrupt or illegal means by exercising his personal influence to obtain a favour from him. Ashok Jadhav is not a public servant. On this ground alone, the charge under Section 8 and 9 of PC Act has to be dropped. PW-1 also admits that he knows the procedure as to how chapter cases are initiated and it was not possible for accused to start chapter proceedings against him and this was to be done by the concerned Police Officers. If this was so, complainant should have made inquiries and also obtained information as to which Police Officer was going to commence chapter proceedings against him. When complainant is aware about the procedure, where was the need for him to believe accused that if Rs.1,000/- was not

given, accused will commence chapter proceedings against him.

8 Complainant PW-1, in his cross examination, has also admitted that (a) on one occasion warrant has been served on him based on accused identifying him; (b) a cheque issued by him in favour of one Srinath Credit Society has been dishonored and criminal cases were filed against him; (c) a case has been filed against him for assaulting one Satish Suresh Khude with a shaving razor and (d) he used to work in Asu Warat Pickle and condiments company from where he was dismissed. These incidences point to the character of PW-1 complainant and the Trial Court was justified in disbelieving complainant that accused had demanded Rs.1,000/- as illegal gratification. In such a situation, corroboration of complainant's version was a must. The Trial Court came to a conclusion that corroboration was not satisfactory because in the pre-trap panchnama, it is not recorded what kind of signal was to be given by complainant to the raiding party after paying the bribe money. According to PW-1 and PW-2, the signal was to pull back the right hand sleeve of the shirt and by raising his right hand but the same is not mentioned in the pre-trap panchnama. This is an omission in the prosecution's evidence. In the trap panchnama, PW-2 is recorded to have said that bluish shining was seen on the fingertips of the right hand of complainant as well as on the edges of the left side chest pocket of his shirt. In the deposition of PW-1, PW-1 mentions only about his fingertips and is silent about the shirt pocket. PW-2 has also failed to relate to the trap panchnama. In his deposition, PW-2 does not say that "bluish shining" being

traces of anthracene powder was seen on the fingertips of the right hand of PW-1 as well as the edges of left side chest pocket of PW-1's shirt. PW-2 also does not state that the hands of accused were examined and "bluish shining" was seen on the fingertips of his right hand. When the first pancha, i.e., PW-2 has failed in deposing that anthracene powder was found on the hands of accused, the second pancha also was not called. There are many other such points raised in the impugned judgment which for the sake of brevity I am not delving into. I would hasten to add that I agree with the conclusions of the Trial Court.

9 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 Section 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. (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.

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

2. (2014) 5 SCC 730

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

3. 1996 SCC (cri) 972

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 from the date of receiving 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 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 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.

(K.R. SHRIRAM, J.)

Gauri A.
Gaekwad

Digitally signed
by Gauri A.
Gaekwad
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2020.11.09
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