

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1339 OF 2006**

The State of Maharashtra

....Appellant
(Orig. Complainant)

V/s.

Ankush Sakharam More
Age about 52 years,
Occu. : Service,
R/o. Nisarga Apartment,
Lane No.3, Prabhat road,
District - Pune.

....Respondent
(Orig. Accused)

Ms. Anamika Malhotra, APP for State.

Ms. Tanvi Tapkire i/b Mr. Umesh R. Mankapure for Respondent.

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

ORAL JUDGMENT :

1. This is an appeal impugning an order and judgment dated 29th July, 2006 passed by the Special Judge, Pune acquitting respondent (hereinafter referred as accused) of offence punishable under Section 7 (*Public servant taking gratification other than legal remuneration in respect of an official act*), Section 13 (1) (d) r/w 13 (2) of the Prevention of Corruption Act, 1988.

2. It is the case of prosecution that accused was working as a Deputy Labour Commissioner during the period from 01/07/2001 to 28/02/2002. One Naju Daruwala (PW.1) who was working as a teacher

had filed an application for getting gratuity after retirement. The Controlling Officer had passed an ex parte order in favour of P.W. 1. The said order was challenged in appeal before the Deputy Labour Commissioner by the department and hearing was fixed on 18/01/2002. At that time, P.W. 1 along with her advisor one Father Saldhana, who has not been examined, went to the office of the accused. That time, accused asked P.W. 1 to wait outside and made demand of Rs.10,000/- to Father Saldhana for issuing a cheque for Rs.1,08,915/- and passing favourable order to the complainant. Father Saldhana narrated the demand of accused to P.W. 1 and asked her to meet accused. So P.W. 1 met accused on few occasions but every time accused demanded Rs.10,000/-.

3. Again on 25/02/2002 P.W. 1 met accused in his office and once again requested him to issue cheque and settle her dues. That time, accused is alleged to have informed P.W. 1 that unless she pays Rs.10,000/- to him, he will not issue cheque. Therefore, P.W. 1 went to Anti Corruption Bureau Office on 28/02/2002 and lodged a complaint. A pre-trap panchanama was prepared and trap was decided to be conducted on 28/02/2002 itself. P.W. 1 and panch witness Vijaya Bole (P.W. 2) entered the cabin of accused. The other members of the raiding party stayed outside. P.W. 1 requested accused to issue the cheque and accused once again made demand. The complainant then handed over the marked currencies to accused and on receipt of the amount by accused, complainant came out

and gave signal to the raiding party as decided earlier. The hands of accused were held by the members of the raiding party. The bribe amount was found in the drawer of the table of accused. Anthracene powder marks were not found on the hands of the accused but were found on some papers inside the drawer. The detailed post-trap panchanama was prepared. Report was filed with the police, based on which the crime was registered. After investigation, proposal was sent to the sanctioning authority and after obtaining sanction charge-sheet was filed. The accused pleaded not guilty and claimed to be tried. The defence of the accused is of total denial.

4. To prove the guilt, prosecution led evidence of four witnesses, Complainant Najoo Jamshetji Daruwala as P.W. 1, Shadow Panch Vijaya Murlidhar Bole as P.W. 2, Sanctioning Authority Ashok Sitaram Khot as P.W.3 and Investigating Officer Sampatro Pandurang Kate as P.W. 4.

5. The defence has challenged the sanction for prosecuting the accused. The trial court correctly come to a conclusion that proper sanction was not obtained. This is because P.W. 3 in examination-in-chief has deposed that the government is the appointing and removing authority of the persons working as Deputy Labour Commissioner and accused was Deputy Labour Commissioner. In the cross-examination P.W. 3 admits that the concerned Minister of the department did not recommend the case for prosecution. Eighteen years have passed and even the witnesses may not be

available. Therefore, it would make no sense in ordering a fresh trial after obtaining fresh sanction.

6. Even on merits the trial court has rightly come to a conclusion that prosecution has miserably failed to prove the guilt of accused. As noted earlier, it is prosecution's case that the first demand was made by accused on 18/01/2002 and thereafter regularly until 25/02/2002, when P.W. 1 was meeting accused. It is also prosecution's case that on 25/02/2002 P.W. 1 met accused at his office to request to issue the cheque. On that date P.W. 1 was told by accused that unless amount of Rs.10,000/- was paid, he will not issue the cheque. But defence has proved that accused was not present in his office on 25/02/2002 because he was on leave and gone to his home town in Satara district to participate in 10th and 13th day obsequies of his brother who died on 12/02/2002. Defence also raised a point, the question of handing over of cheque by accused to P.W.1 did not arise because, even if accused held in favour of P.W. 1 in the appeal, the cheque was to be given from the office of the Additional Commissioner. The defence therefore argued that the submissions of prosecution that accused demanded a sum of Rs.10,000/- for handing over the cheque is baseless.

7. It is also prosecution's case that on 18/01/2002 when P.W. 1 went with Father Saldhana to the office of accused, they met accused in his chamber. Accused asked P.W. 1 to wait outside and then he told Father

Saldhana a sum of Rs.10,000/- has to be given to him and Father Saldhana came out and informed P.W. 1 about demand of accused. Thereafter, Father Saldhana asked P.W. 1 to meet accused personally. P.W. 1 has also deposed that she met accused three times in his cabin and each time accused was demanding money. The dates are mentioned. Again on 25/02/2002 when P.W.1 met accused for getting her amount accused asked her whether she brought the amount and said that unless amount of Rs.10,000/- is paid he will not be giving the cheque. P.W. 1 therefore requested accused to give her two to three days time and accused told her to bring the amount on 28/02/2002 and asked her to come in the evening at 5.00 p.m. after which she went to office of Anti Corruption Bureau and lodged report.

8. In her evidence or in her complaint, P.W. 1 has nowhere mentioned that on 18/01/2002 after Father Saldhana conveyed message of accused to her, she met accused on that day, i.e., on 18/01/2002 and accused demanded from her Rs.10,000/- on 18/01/2002. Therefore, as per prosecution's case, demand on 18/01/2002 was made by accused to Father Saldhana who conveyed the message to P.W. 1 but Father Saldhana has not been examined.

So far as subsequent two to three demands before 25/02/2002, P.W. 1 has not given details of the date or time when she met accused two or three times. According to P.W.1 the last demand was on 25/02/2002. But it has come on record that accused has filed a certificate that he was on leave on 25/02/2002.

9. P.W. 1 has also deposed that accused passed an order in her favour on 18/01/2002 and hence demanded money for the cheque. But there is no order passed by accused in appeal filed by the department. Nothing is brought on record by the prosecution though record and proceedings in the appeal have been seized. Therefore, contentions of P.W. 1 that accused passed an order on 18/01/2002 and then made demand for release of cheque is not believable.

10. Panch witness P.W. 2 also says that Father Saldhana was there with them when P.W. 1 and P.W. 2 went to the office of accused on 28/02/2002 for the trap. P.W. 2 says father Saldhana was waiting outside and he asked complainant and panch to go into the cabin of accused. Strangely there is no mention of presence of Father Saldhana either in the Anti Corruption Bureau office or in the pre-trap panchanama or that Father Saldhana accompanied the complainant and panch witness to the office of accused. Prosecution has no explanation as to why there is no reference to Father Saldhana anywhere. P.W. 1 has mentioned that she had taken amount of Rs.10,000/- from Father Saldhana which was to be used for trap. The record also indicates that Father Saldhana had even filed a Public Interest Litigation for suspension of accused and that Public Interest Litigation was dismissed. In the circumstances, when P.W. 2 deposed that Father Saldhana was present in the Anti Corruption Bureau office at the time of pre-trap panchanama and he had accompanied P.W. 1 and P.W. 2 to

the office of accused with the raiding party, failure to mention these facts amounts to concealment/suppression of truth.

Defence had also argued that Father Saldhana has falsely implicated accused in this case and it was Father Saldhana who was interested in getting accused suspended and to that extent even filed Public Interest Litigation.

11. The other point which tilted the scale against prosecution is that the bribe amount was found in the drawer of accused and not with accused or on his person. No anthracene powder mark was found on the hands of accused or on the person of accused. It is prosecution's case that amount was kept in the drawer by P.W. 1 on the instructions of accused. But the evidence of P.W. 1 and P.W. 2 shows lots of omissions and contradictions and appears unreliable. In the evidence of P.W. 1 she says, she introduced P.W. 2 to accused as her friend and her sister sent her along with her because P.W. 1 was not well and accused asked P.W. 2 to go out and wait but P.W. 2 refused to go out and stated that she stayed there as she was close friend of P.W. 1. But accused insisted that P.W. 2 should go out so P.W. 1 went out of the room. But P.W. 2 says that she was introduced to accused as neighbour of P.W. 1 and when accused asked her to leave cabin she went out. When she went out employee of Anti Corruption Bureau by gesture asked her to go inside so she went again inside office of accused. When she went inside again P.W. 2 informed accused that P.W. 1 was not feeling well so she will be

with her. But accused insisted that P.W. 2 wait outside. But P.W. 2 did not leave cabin.

P.W. 2 says that when they first went inside, accused told P.W. 1 to come on Monday and that her work will be done on Monday. But P.W. 1 said that it was not possible for her to come on Monday and therefore, accused asked P.W. 2 to wait outside and P.W. 2 went outside. P.W. 1 does not say anything of this sort in her deposition.

12. P.W. 2 says that Father Saldhana had accompanied them for the raid whereas P.W. 1 has not mentioned that Father Saldhana was with them when they went to the office of accused for the raid. Even as regards to happenings inside the cabin as noted earlier there has been contradictions.

13. P.W. 1 and P.W. 2 stated that accused opened the drawer and asked P.W. 1 to place the amount whereas in the panchanama there is no mention that accused opened drawer. P.W. 1 has deposed that after she kept amount in the drawer, accused kept a file on that amount whereas panch witness has not stated anything about keeping of any file by accused in the drawer on the amount kept by P.W.1, complainant. This was relevant because specific case of the defence is that accused did not make any demand but the complainant herself kept the amount in the drawer. In fact, this defence can be found in the statement of the Investigating Officer immediately after the trap and P.W. 2 and Investigating Officer P.W. 4 have admitted the same.

14. The circumstances in the case where that no order has been passed in favour of P.W. 1, the question of accused handing over any cheque to P.W. 1 also would not arise. If the demand was motive or reward for doing an official act, i.e., issuing cheque, the complainant P.W.1 has admitted that no cheque has been issued to her by accused and the specific contention of the defence was that the cheque was to be issued from the office of the Additional Commissioner and not accused.

15. Keeping in mind all these facts and circumstances, the trial court acquitted accused.

16. 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.

¹ (2008) 10 SCC 450

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

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.

17. I have perused the impugned judgment, considered the evidence, also heard Ms. Malhotra, learned APP and Advocate Ms. Tanvi Tapkire for Respondent. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the impugned judgment. From the evidence available on record, there is nothing to substantiate the charge

³ 1996 SCC (Cri) 972

leveled against accused.

18. 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.

19. 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.

20. Appeal dismissed.

21. 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 respondent and will factor in all promotions and increments that respondent 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.)