

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.135 OF 2003**

State of Maharashtra	)	Appellant/Complainant
V/s.		
Ishwara Ramchandra Patil	)	
Age : 40 yrs.,	)	
R/o. H. No.2025, 8 th Lane,	)	
Rajarampuri, Dist. Kolhapur	)	Respondent/accused

Mrs. M.M. Deshmukh, Addl. PP for State – Appellant.
Mr. Saurabh Kshirsagar i/b. Mr. Tejas V. Dhotre for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 25th JUNE 2021**

ORAL JUDGMENT :

1 This is an appeal filed by the State impugning an order and judgment dated 8th July 2002 passed by Special Judge, Kolhapur, acquitting respondent (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) of Prevention of Corruption Act, 1988 (PC Act).

2 It is prosecution's case that the mother of complainant PW-1 was a member of Zilla Parishad and she had applied for a telephone connection under the special quota. When the complainant went to the telephone exchange, he was told that instructions have been given to the local exchange and he should approach the local exchange for connection. Respondent (accused) was operator/person working at the local exchange. On 27th January 1998 when complainant met respondent at his office,

accused is alleged to have informed him that connection will be given, provided a bribe of Rs.300/- was given to him and asked the complainant to come the following day. Complainant went straight to the Office of ACB and lodged a complaint on 27th January 1998.

3 On 28th January 1998, in the morning hours, PW.-4, the investigating officer, called for Panch witnesses and after completing the pre-trap formalities, proceeded to the office of accused.

4 It is prosecution's case that when they reached the office, it was complainant PW.-1 and Shadow panch Dilip Chavan, who went inside to trap accused. Dilip Chavan has not been examined because he is alleged to have died before his evidence could be recorded.

5 According to prosecution, when PW.-1 and Dilip Chavan reached the office of accused, accused was not at his seat and had gone for lunch. So they waited for half an hour and when accused returned to his seat, both of them went to accused and PW.-1 inquired about the telephone connection. Accused informed PW.-1 that telephone connection has already been activated and gave the telephone number which complainant dialed from the desk of accused and complainant's wife had answered on the other side. Complainant was happy and asked his wife to call back but the wife of complainant was unable to reach him and therefore, complainant asked accused why his wife is unable to reach him. Accused told complainant that he has done his work and complainant should do what he was supposed to

do (that is pay Rs.300/- bribe as discussed). Complainant then gave Rs.300/- with his right hand which accused received in his right hand and put it in his hip pocket of pant. Thereafter, complainant went outside on the pretext of having forgotten his vehicle keys and gave the agreed signal to the raiding party, which was waiting near the gate. At that time, the raiding party saw one man rushing out hurriedly from the backside of the building and shadow panch came out and pointed out to that man as accused. Even complainant, who was there, pointed out to accused as the person who had taken the bribe. A Constable, who was part of the raiding party (not examined) and who was near the gate caught accused but by then accused removed the money from his hip pocket and threw it on the ground and tried to push the money into the gutter. Both the hands of accused were caught by P.W.-4 , who then brought accused inside the office. According to prosecution, though money was not found on the person of accused, he is still guilty.

6 After the raid was over, post-raid formalities were completed, report was given by investigating officer based on which, a complaint came to be lodged. After obtaining sanction, charge sheet was filed and prosecution commenced.

7 Accused denied all charges and according to him the telephone

connection had already been activated on 28th January 1998. According to accused, complainant -PW.-1 and his mother, who was working in Zilla Parishad, were very arrogant and rude and were quarrelsome. According to accused, he was also not the person, whose job was to give telephone connection and, therefore, when accused told complainant and his mother that it was not with him to give any telephone connection, they got angry and have lodged this false complaint. Further it was PW.-1 who thrust some currency notes in the hip pocket of accused when he was standing and accused took out that notes from his pocket and threw it down on the floor, that is how traces of anthracene marks were found on the right hand and hip pocket of accused.

8. To drive home its charge, prosecution led evidence of four witnesses, viz., Krishna Nivruti Patil, complainant as PW.-1, Amar Narayan Shinde, 2nd panch witness and who picked up the currency notes from the road side as PW.-2, sanctioning authority Arvind Parvatikar as PW.-3 and Sudhir R. Chougale, DY. S.P., ACB as PW.-4.

9 I have perused the appeal memo, evidence and impugned judgment with the assistance of the Learned Additional PP and the Learned Counsel for respondent. I do not find any infirmity in the conclusion arrived at by the Trial Court and in my view, no interference is called for.

10 Before I proceed further, I have to note that, accused is working in the local telephone exchange. It is not prosecution's case that telephone exchange was deserted because no other employee of telephone exchange has been called to give evidence. It is not prosecution's case that the spot, from where the respondent was nabbed and the tainted money was picked up, was deserted. No independent witnesses have been examined. As the shadow panch also has expired, the entire evidence of demand and payment hinges on the sole evidence of PW.-1.

11 Let us see whether PW.-1 was a reliable witness. In my view, the Trial Court has rightly concluded that his evidence cannot be solely relied upon. It is prosecution's case that the amount of Rs.300/- was demanded on 27th January 1998 for activating telephone connection at the residence of the mother of complainant. Admittedly on 28th January 1998, when PW.-1 went to trap accused, accused informed PW.-1 that his work was done and telephone line has been activated. It is prosecution's case that admittedly, accused gave telephone number also and PW.-1 dialed that number and was happy to hear his wife's voice on the other end but, when the wife tried to call him back, she could not get the connection, at which stage, when he enquired with accused, accused said he has to do what he has promised to do. Prosecution is imputing that accused said unless he pays Rs.300/- as bribe, no outside call can be made from the telephone provided at the residence of mother of PW.-1. After considering the evidence, it came to light that (a) the wife of PW.-1 has not been examined to prove that she was

unable to get through/make outgoing calls; (b) there is nothing to indicate how the wife knew the number, which she had to dial because P.W.-1 does not state that accused gave him the number to be passed on to his wife to call back. Nor complainant says how he knew the number to which, his wife should call to speak to him and he passed on this number; (c) how did he know within that few minutes that his wife was unable to call back because P.W.-1 was in front of accused and his wife was at his mother's residence. These are very valid questions which has not be dealt with in the evidence of PW-1.

12 Therefore, it is difficult to accept the prosecution's case that even after the telephone connection was activated, accused still demanded money and took the tainted money.

13 P.W.-1 says after handing over the tainted money, accused received it with his right hand and put it in hip pocket of his pant and then P.W.-1 went outside on the pretext of having forgotten the vehicle keys and gave the agreed signal to the raiding party and the raiding party apprehended accused near the gate when accused was rushing out hurriedly from the back side of the building. Nothing has come on record as to why accused rushed out of the building when there was no raiding party in front of him in the office because until that stage, accused was not aware, as it appears from prosecution's evidence, that there was a trap laid for him. If P.W.-1 was in front side of the building, how would he see accused coming outside from backside of building, is not explained. If, both were on two

opposite sides of building, how does P.W.-1 identify accused to the raiding party, which is what P.W.-1 says. If P.W.-1 has identified and seen accused rushing outside of the building from the backside, then, I ask myself why he is silent about accused throwing out tainted money on the road and trying to push it with his legs into the gutter.

14 There are many such lacunas and grey areas in the evidence of P.W.-1, which are dealt with in the impugned judgment. For the sake of brevity, I do not find it necessary to deal with all these points because in my view also, from what has been discussed above, the evidence of P.W.-1 is not reliable. We have to juxtapose the evidence of P.W.-1 with accused as stated in his defence that it was P.W.-1 who thrust some currency notes in the hip pocket of pant of accused when he was standing and accused took out those notes from his pocket and threw it on the ground, and that is how anthracene marks were found on his right hand and hip pocket.

15 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.

1. (2008) 10 SCC 450

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. 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

2. (2014) 5 SCC 730

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.

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.

16 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

3. 1996 SCC (cri) 972

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.

17 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.

18 Appeal dismissed.

19 The Government/Appropriate Authority shall pay over to respondent - Ishwara Ramchandra Patil, 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 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 order. Certified copy expedited.

(K.R. SHRIRAM, J.)