

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.466 OF 2004**

The State of Maharashtra) ..Appellant

V/s.

Balasaheb Krishnaji Chougule)
Aged 50, Occupation – Service)
Yamge, Tal. Kagal, R/o Ichalkaranji,)
District Kolhapur) ..Respondent

Ms. P. N. Dabholkar, APP for State
None for Respondent

**CORAM : K.R.SHRIRAM, J.
DATED : 5th MARCH 2021**

ORAL JUDGMENT:-

1 This is an appeal impugning an order and judgment dated 29th November 2003 passed by Learned Special Judge, Kolhapur, acquitting respondent (accused) of the offence punishable under Section 7 and 13(1) (d) read with Section 13(2) of Prevention of Corruption Act, 1988.

2 I have perused the impugned judgment and the evidence with the assistance of the Learned APP. When confronted by the court, the Learned APP could not but agree, that the demand itself is suspicious. The grievance of complainant about the fuse being removed twice and for not giving adverse report against him itself is difficult to believe. The Learned APP, though made an attempt, had to agree that the entire evidence shows that on the two dates when the demand was allegedly made by accused, i.e., on

16th July 2001 and 19th July 2001, accused was on casual leave and he was on tour to village Malge Khurd. When accused was on leave and was on tour, there was no opportunity for complainant to meet accused which raises a question on the demand itself. P.W.-4 has stated that even on 20th July 2001 accused was on tour. P.W.-5, I.O. says he was an eye witness of accused taking the money because when he was standing near the tea stall he has seen accused taking something from complainant and put in his pant pocket. But this is not found in the panchnama. Panchnama, on the contrary states that when the raiding party came there they asked complainant and P.W.-2 as to what happened and they narrated what happened.

3 Moreover, no panchnama has been drawn of the meter or the place which was the origin of the matter. I.O. also admits that post-trap panchnama was not drawn on the spot or in the office of MSEB but was drawn in the guest house at Nidhori and he has not given any explanation for drawing panchnama at the guest house.

4 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

¹(2008)10 SCC 450

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. 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 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.

5 I do not find anything palpably wrong, manifestly erroneous or

²(2014) 5 SCC 730

³1996 SCC (cri) 972

demonstrably unsustainable in the impugned judgment. From the evidence available on record, there is nothing to substantiate the charge leveled against accused.

6 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.

7 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.

8 Appeal dismissed.

9 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 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.)