

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.670 OF 2004**

The State of Maharashtra)Appellant/Complainant

V/s.

Gopichand Mahadev Mane)
Age : 48 yrs., Occ.: P.H.C.)
B.No.535, Valsang Police Station,)
Sukh Sapana Apartment, Hotgi Road,)
Solapur)Respondent/accused

Mrs. M.M. Deshmukh, APP for State – Appellant.

Mr. Satyavrat Joshi for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 9th APRIL 2021

ORAL JUDGMENT :

1 At the outset, leave to amend the cause title of the Appeal Memo is granted. Amendment to be carried out forthwith.

2 This is an appeal filed by the State impugning an order and judgment dated 18th February 2004 passed by Special Judge, Solapur, 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 (2) read with Section 13 (1) (d) of Prevention of Corruption Act, 1988 (PC Act).

3 With the assistance of the learned APP and Mr. Joshi appearing for respondent, I have perused the judgment impugned and also the evidence. In my view, intervention of this Court is not called for.

4 It is prosecution's case that accused was a Head Constable in Valsang Police Station. On or about 2nd November 2002, complainant Dattatraya Laxman Kambale (PW-2) had gone to the Police Station to record a complaint about theft in his house. It is prosecution's case that accused directed complainant to come the following day. The following day, i.e., 3rd November 2002, PW-2 went to the Police Station and his complaint was recorded by Police Station Officer who also directed accused to enquire into the complaint. According to prosecution, complainant had informed accused that he suspected one Khandu Vithoba Kambale behind the theft. Accused informed complainant that he would make necessary enquiries and purely based on his suspicion, accused cannot take immediate action against Khandu Vithoba Kambale.

5 In the meantime, proceedings under Section 107 read with Section 157 of Code of Criminal Procedure was initiated against Khandu Vithoba Kambale, who was arrested and released immediately. Complainant was unhappy with the fact that Khandu Vithoba Kambale was released immediately. When PW-2 questioned accused about the release of Khandu Vithoba Kambale, accused, it seems, informed complainant that there is a complaint lodged against complainant by Khandu Vithoba Kambale and if complainant should not be arrested under that complaint, he should pay him a sum of Rs.1000/- as illegal gratification. This demand was allegedly made on 11th November 2002. It is prosecution's case that accused informed complainant (PW-2) to bring the amount of Rs.1000/- to Valsang Police Station on 12th November 2002.

6 Unhappy with this demand, PW-2 approached Anti Corruption Bureau and lodged a complaint. Investigating Officer – Dilip Chintamanrao Shepal (PW-4) arranged for two panch witnesses and after completing the pre-trap formalities, the raiding party went towards Valsant Police Station on 12th November 2002. It seems when PW-2 complainant and Basappa Bhimsha Koli, the Shadow panch (PW-1) met accused at the Police Station, accused is supposed to have asked about the money to be paid to him and when complainant told him that he has brought the money, complainant was told to go out. After some time, accused came with another Police Constable on a motor cycle and told PW-2 and PW-1 to meet them at Jilani Tea Stall near S.T. Bus Stand. All the four met at the tea stall and after consuming tea, accused demanded the amount, complainant gave the amount which accused received and kept it in his pant pocket and all four came out of the tea stall. Complainant thereafter, paid for the tea consumed and signaled the raiding party. The raiding party rushed in, caught hold hands of the accused and the other panch witness removed the money from the pocket of accused. Traces of anthracene powder were found on the hands of the accused and also in the pant pocket. The notes were tallied with the pre-trap panchnama. Thereafter, post-trap panchnama was prepared, complaint was lodged and accused came to be arrested. Statements of witnesses were recorded, file was forwarded to SP/ACB Pune for obtaining sanction and after receipt of sanction order, chargesheet came to be filed against accused. Accused pleaded not guilty and claimed to be tried. The stand of the accused is that complainant was unhappy

with accused for not having arrested Khandu Vithoba Kambale and therefore, trapped accused by thrusting the tainted notes in his pocket. The Trial Court, after considering the evidence thought it fit to acquit accused because of contradictions in the statements of complainant as well as panch witness and also the fact that important witnesses were not examined.

7 To drive home the charge, as against 19 witnesses listed, prosecution led evidence of four witnesses, viz., Basappa Bhimsha Koli, panch witness as PW-1; Dattatraya Laxman Kambale, complainant as PW-2; Sudhakar Dashrat Trimbake, Sanctioning Authority as PW-3; and Dilip Chintamanrao Shepal, Investigating Officer as PW-4. Importantly the Constable, who is supposed to have accompanied accused to the tea stall on 12th November 2002 when the illegal gratification allegedly was given, has not been examined though his name is mentioned at serial no.13 in the list of witnesses. The prosecution also did not examine the owner of the tea stall or the person who was in the cash counter or for that matter any other independent witness and I would assume there would have been quite a few because the raiding party trapped accused outside the tea stall near the S.T. Bus Stand and it is not prosecution's case that it was a public holiday that nobody was around the tea stall or Bus Stand. Infact as noted earlier, 19 witnesses have been listed but only four, of which one is complainant, have been examined. This itself goes against the prosecution's case.

8 There are many grounds which the Trial Court has listed to acquit accused and all those grounds raised meets with the approval of this Court. I

would only highlight a few of them apart from those already noted above of non production of witnesses.

9 According to complainant, on 12th November 2002 when he went into the Police Station accompanied by PW-1, accused is supposed to have made a demand and told PW-1 and PW-2 to wait outside. PW-1, the panch witness does not say this in his testimony. Moreover, according to PW-2 complainant, after they consumed tea, accused once again asked for the bribe amount, which he gave and accused received it and placed it in his pant pocket. PW-1, however, states that after consuming the tea all the four came out of the tea stall and accused and the other Police Constable sat on the motor bike after which the demand was made and complainant handed over the marked currencies and then accused placed those amounts in his pant pocket. According to PW-1, after the amount was given and accused placed the amount in his pocket while sitting on the motor cycle, the agreed signal was given and the raiding party came and caught hold of accused. The Investigating Officer also does not support this theory of PW-1. Even the post-trap panchnama does not mention that accused accepted the amount outside tea stall and while sitting on the motor cycle and this is not mentioned even in the statement of PW-1. PW-1 admits that there is an omission but PW-1 states that he had mentioned that to the Police while his statement was recorded but he cannot give reason why it is not appearing in his statement.

10 There are also contradictions as to how the complaint of complainant for theft in his house came to be reduced to writing in the Police

Station. According to PW-2 he lodged the complaint with accused but accused had directed him to come on the next day. Complainant further states that he had lodged the complaint with accused who reduce it to writing and accused had told complainant that on the basis of suspicion no action could be taken against Khandu Vithoba Kambale. But in his cross examination, PW-2 admits that the complaint was not written down by accused but complainant had written the complaint and brought it to the Police Station. Therefore, complainant has contradicted himself. Further in his cross examination, complainant admits that he presented the complaint before a person who made an endorsement on the complaint and it has come on record that it was one Mr. Khatke, ASI who had made that endorsement that accused should make enquiries. Therefore, the statement of complainant that he presented the complaint before accused cannot be believed.

11 Learned APP submitted that tainted currency was found in the pocket of accused. Learned APP relied on Section 20 of the Act and submitted that there is a statutory presumption. The law on the issue is well settled that demand of illegal gratification is *sine qua non* for constituting an offence under the PC Act. Mere recovery of tainted money is not sufficient to convict the accused when the substantive evidence in the case is not reliable. This Court has held that mere receipt of amount by the accused even if proved is not sufficient to fasten the guilt in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. While considering the provisions of Section 20 of the Act, the Court is required to

consider the explanation offered by accused only on the touchstone of preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. It is also settled law that if two views are possible, the Appellate Court should not interfere with the acquittal of the Lower Court and unless material on record leads to inescapable conclusion of the guilt of accused, the judgment of acquittal will not call for interference by the Appellate Court. I find support of this view in the case of ***State of Maharashtra V/s. Sardar Chandsaheb Silar¹*** relied upon by Mr. Joshi.

12 The Apex Court in ***Ghurey Lal V/s. State of U.P.²*** 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 reappraise 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. 2020 ALL MR CRI (1520)

2. (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***³ 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

3. (2014) 5 SCC 730

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*⁴ 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.

13 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

4. 1996 SCC (cri) 972

rightly observed that the prosecution had failed to prove its case.

14 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.

15 Appeal dismissed.

16 The Government/Appropriate Authority shall pay over to respondent - Gopichand Mahadev Mane, 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.)