IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.98 OF 2007

The State)
through K. P. Sawant, Dy. Superintendent)
of Police, Anti Corruption Bureau,)
Alibag- Raigad) ..Appellant

V/s.

1 Kashinath Shankar Patil (since deceased))
through legal heirs)

2 Surekha Kashinath Patil (sine deceased))
through legal heirs)

1(a) Kirtida Sandip Shelke)
Age 35 years, R/o Hill View Complex,)
B-208, Near Gaondevi Mandir, Adai Gaon,)
New Panvel 410206)

1(b) Shama Pravin Kadam)
Age 31 years, R/o Vatvruksha Near)
Bhimeshwar Temple, P.O. Nagaon,)
Tal Alibag, Dist Raigad)

1(c) Mandkar Kashinath Patil)
Age 29 years, R/o Aayush Residency,)
Flat No.202 Second floor, Opp Shriman)
Apartment, Shribag No.2, Alibag)
Dist Raigad 402201)

3 Kashibai Shankar Patil)
(since deceaed abated)) ..Respondents
(Ori. Accused nos.1 to 3)

Mrs. Anamika Malhotra, APP for State
None for Respondents

CORAM : K.R.SHRIRAM, J.
DATED : 4th JANUARY 2021

ORAL JUDGMENT

1 This is an appeal impugning an order and judgment dated 20-4-2006 passed by Learned Special Judge, Raigad, acquitting the respondents of the offence punishable under Section 13(1)(e) read with Section 13(2) of Prevention of Corruption Act, 1988.

2 During the trial, respondent no.3 expired. Accused no.2 is the wife of accused no.1 and accused no.3 was the mother of accused no.1. Accused nos.2 and 3 are alleged to have abetted accused no.1 in commission of the offence as charged. It appears, during the pendency of this appeal, respondent nos.1 and 2 have also expired. Unfortunately, they are not alive to see the states' appeal against their acquittal getting dismissed and their innocence being endorsed by this court. Respondent nos.1(a) to 1(c) are the legal heirs of original respondents nos.1 and 2.

3 It is prosecution's case that accused no.1 was appointed as a Lower Division Clerk in the year 1974. Till 31-7-1992, accused no.1 worked in different capacities as Upper Division Clerk, Nayab Tahsildar and Tahsildar in different places in the District of Raigad and Mumbai. On receiving information ACB Alibag, caused an inquiry to be conducted to ascertain whether accused no.1 has accumulated assets disproportionate to his known sources of income. Having made inquiries, Dy. Superintendent of police submitted his report to Dy. Commissioner of Police, ACB Mumbai who, after examining the papers, directed Dy. Superintendent of Police Sawant to go

ahead. Accordingly, Dy. Superintendent of Police, with the help of his staff and in the presence of witnesses, raided the house of accused no.1 by the name Swami Chaitnya on 30-7-1992. In the course of search of the house accused no.1 was found in possession of assets in the form of house hold articles of domestic use as well as luxurious items and also was found in possession of house properties at Korlai, a house site at Chendhare, bank balance, wearing apparels, gold ornaments, National Savings Certificate, Indira Vikas Patra etc., which according to prosecution was worth Rs.6,74,696/-, whereas till the end of his service accused no.1 had earned a salary in the sum of Rs.2,86,367/-. Admittedly, accused nos.2 and 3 also had their own independent income source which, when added to the income of accused no.1 showed the total income of the family was Rs.4,98,655/-. Prosecution assumed 40% of the total income of the family as expenditure, i.e., Rs.2,59,673/- and the balance 60%, which was taken to be the likely savings. Prosecution after making deduction of possible savings as per its estimates from the total assets found in possession of accused no.1, came to a conclusion that accused no.1 was in possession of disproportionate assets in the sum of Rs.4,37,713/- Accused no.1 could not, according to prosecution, give satisfactory explanation and, therefore, was guilty of the offence charged.

4 Accused no.1 denied the charge and claimed to be tried. According to accused no.1, the value of assets as shown by prosecution included contribution made by accused nos.2 and 3. Accused no.2 was a commission

agent of Pearless General Finance and Investment Company (Pearless) and also earned income by selling fish. Accused nos.2 and 3 were also fish mongers and house properties and land are exclusive properties of accused nos.2 and 3 to which, accused no.1 has not made any contribution.

5 To drive home the charge, prosecution led evidence of 23 witnesses and also relied on several documents. During the course of trial, as noted earlier, accused no.3 died. Trial Court after considering the evidence and the documents acquitted the accused. Having considered the evidence and the impugned judgment and having heard the Learned APP, I cannot find fault with the conclusions arrived at by the Trial Court.

6 According to prosecution, the total salary earned by accused no.1 from his employment was Rs.2,86,367/- but they have also considered the income of accused no.2 as Rs.20,000/- from the commission earned having worked as agent of Pearless and amount of Rs.56,000/- as loan to accused no.2 and accused no.3 from different sources. Prosecution has also considered income of accused no.2 and accused no.3 from fish mongering and arrived at a total income of Rs.4,96,655/-. Therefore, admittedly all the three accused had their own independent source of income.

7 Investigating officer P.W.-23 Bharat Saravade, in his cross-examination stated that amount of income earned by accused nos.2 and 3 were determined on the basis of average income made by other retail fish sellers. P.W.-23 states that amount of income from fish business made by accused nos.2 and 3 was on the basis of average income of other fish vendors. It has

come in evidence that brother of accused no.1 and husband of accused no.3, i.e., father of accused no.1 also earned from fishing and sale of fish and, therefore, whole family not just the three accused, were in the business of fish mongering. Arriving at the figure of income of accused nos.2 and 3 based on the average income made by other fish mongers defies sensibility. Similarly, there is no evidence to show how they arrived at a figure of Rs.20,000/- as an income earned by accused no.2 as a commission agent of Pearless. Therefore, the income of the accused and family might be even more than what the prosecution's claims and limits as Rs.4,96,655/-. Therefore, the entire basis of prosecution's case is mere speculations and assumptions and that cannot be a ground to prosecute somebody under the provision of Prevention of Corruption Act. Moreover, the records also indicate that the house property in Village Korlai, the plot on which house Swami Chaitnya has been built and structure of the house stood in the name of accused no.3. Merely because accused no.1 and members of his family were living in the said house Swami Chaitnya, does not mean that accused no.1 and accused no.2 had made any contribution in the purchase of the said property particularly, when no evidence has been led. When the properties stand in the name of accused no.3 since the time of its purchase, necessarily it implies that the property was acquired by the income of accused no.3 and it is her self acquired property. Similarly, the house of Korlai admittedly is in the name of accused no.3 and it has to be her own property. Even according to prosecution the said house is a very old structure. Similarly the house site in plot at Chendharne stands in the name of accused no.2 and it is prosecution's case that accused no.2 had her own source of income. The income of accused no.2 is based on assumption and not any justifiable calculation. Similarly, National Savings Certificates are all in the name of accused no.2. There is no evidence that accused no.1 had purchased these certificates in the name of accused no.2. So far as Indira Vikas Patra is concerned, it does not even indicate who is the purchaser and in whose name the same stood. Of course, it is prosecution's case without any evidence that same were purchased by accused no.2. Therefore, if the assets which relates to accused nos.2 and 3 are excluded, the total value of the assets in the name of accused no.1 is well within the legitimate earning made by accused no.1 during his employment.

8 Moreover, accused no.1 became Government servant in 1974, he also admittedly comes from a family of fishermen and there is also a possibility that he had some income of his own before he was appointed as public servant.

9 To conclude, there is absolutely nothing in the evidence of prosecution to show as to exactly how much earnings were made by accused nos.2 and 3, what were the assets accumulated by them from their independent source of income and what was their contribution in the savings made. Merely stating (I would say speculating) accused no.2 earned Rs.20,000/- as commission and accused nos.2 and 3 have Rs.1,09,500/- from fish mongering as only earnings made by them, in the absence of specific

evidence, is not acceptable. When the mother and wife of accused no.1 are living with accused no.1 and admittedly have independent source of income, certainly prosecution has to adduced definite and certain evidence in order to justify its contentions.

10 Even as regards the sanction from evidence of P.W.-22, it appears that he was working as Joint Secretary and in his capacity as such was empowered to communicate the orders of the State Government. Accordingly to P.W.-22 the proposal of according necessary communication was moved and it was verified and scrutinized at different levels and finally it was approved by the Chief Minister and Department of Law and Judiciary, after which he issued the final sanction order sanctioning the prosecution.

In the circumstances, the sanction accorded based on consultation with various departments including Chief Minister of the State, Law & Judiciary Department, Home department etc. will have to be invalid. It could not assist the sanctioning authority to say that even he has applied his mind independently though I do not find him saying that in his evidence.

11 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.

12 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

1 (2008)10 SCC 450

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. 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

2 (2014) 5 SCC 730
3 1996 SCC (cri) 972

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 I have perused the impugned judgment, considered the evidence and also heard Ms Malhotra, learned APP. 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 leveled against accused.

14 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.

15 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.

16 Appeal dismissed.

17 The Government/Appropriate Authority shall pay over to the legal heirs of respondent no.1, within a period of 60 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. Legal heirs shall, alongwith copy of this order, forward the heirship certificate or succession certificate or probate or any similar documents to prove that they are the only legal heirs and jointly advise in what proportion it should be paid to whom. If during the service, in view of this matter, the promotions or increments of accused no.1 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 no.1 and will factor in all promotions and increments that accused no.1 would have been entitled to and all the amounts shall be accordingly paid within 60 days.

After 60 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.)