

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.91 OF 2006**

The State of Maharashtra	)	Appellant/Complainant
V/s.		
Ishwar Sattu Narayankar	)	
Age : 28 years, Occu.: Service	)	
R/o. 17/28, Shastrinagar,	)	
Solapur	)	Respondent/accused

Mrs. Anamika Malhotra, APP for State – Appellant.
None for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 26th FEBRUARY 2021**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 31st July 2004 passed by the Chief Judicial Magistrate, Solapur, acquitting respondent (accused) of offences punishable under Section 409 (*Criminal breach of trust by public servant, or by banker, merchant or agent*) and Section 477 (A) (*Falsification of accounts*) of the Indian Penal Code (IPC).

2 It is prosecution's case that accused was attached to Solapur Municipal Council as Junior Clerk since 18th August 1989 and was transferred to Bhavana Rushi Peth Health Centre with effect from 4th October 1991. The work of family planning was allocated to the health centre. Family planning operations like inserting Copper-T was to be performed at the health centre. Amounts were also paid to patients of family planning and for undergoing insertion of Copper-T. The said health centre had two current accounts. The Medical Officer one Dr. Mrs. Panwalkar was

authorised to deposit the amount in the bank accounts and she was also authorised to withdraw the amount from the said accounts. Accused as Junior Clerk was entrusted with the work of maintaining the accounts of the health centre. Accused was also preparing the bills. The internal audit of Solapur Municipal Council audited the accounts of health centre on 24th February 1995 and gave a report that accused had withdrawn an amount of Rs.1,69,798/- from the bank accounts of health centre and he could find entries only for Rs.1,17,299/- and therefore, there was a shortfall of Rs.42,499/- which has been misappropriated by accused.

3 PW-1 Dr. Ashok Shankar Burate filed a complaint as per the directions of the Assistant Commissioner of Solapur Municipal Council. Investigation was commenced, statements were recorded, books were seized and chargesheet was filed. Accused pleaded not guilty and has taken a stand that he was not entrusted with the amount of the health centre.

4 To prove their charge, prosecution led evidence of four witnesses, viz., Dr. Ashok Shankar Burate, Health Officer of Solapur Municipal Corporation, complainant as PW-1; Digambar Ramdas Madgundi, Internal Auditor of Solapur Municipal Corporation as PW-2; Vidyadhar Govind Gambhire, Accountant of Sangli Bank Corporation as PW-3; and Raju Baliram Savant, Health Inspector of Solapur Municipal Council as PW-4. Defence led evidence of Govind Nagappa Hattyalkar, retired Superintendent of Solapur Municipal Corporation as DW-1.

5 As noted earlier, the defence of accused was that on directions of Dr. Panwalkar, accused would present cheques in the bank for withdrawal of cash and after withdrawing the cash, it would be handed over to Dr. Panwalkar. Accused submitted that he was not entrusted with the cash of the health centre and therefore, the question of misappropriating Rs.42,499/- or any other amount would not arise.

6 PW-1 has categorically stated that he filed the complaint on instructions of the Assistant Commissioner of Solapur Municipal Council and he has no personal knowledge about the misappropriation. PW-1 also states that he has not verified the audit report prior to filing of complaint.

7 PW-2 is the Internal Auditor who has opined that there was a shortfall of Rs.42,499/- as it is not reflected in the cash book. According to PW-2, accused was entrusted with payment of funds to patient, assistant, medical officers and also maintaining the accounts of the health centre. According to PW-2, accused has written cash book only for the period from 4th October 1991 to 30th November 1991 and those entries have been signed by Dr. Panwalkar. According to PW-2, accused withdrew more amount than what is mentioned in the registers and vouchers and hence, misappropriated the amount of Rs.42,499/-. PW-2, however, in his cross examination has admitted that as per his audit report, Medical Officer Dr. Panwalkar was also responsible for negligence but she is not an accused. The case of the defence is that as Dr. Panwalkar did not give the challans and vouchers to accused, then how accused could write the cash book. The onus is on the prosecution

to first establish that there was entrustment of property to accused and thereafter, prosecution should show accused converted that property to his own use or his dishonest use is in violation of provisions of law.

8 PW-3 is the Accountant of Sangli Bank who has admitted that Dr. Panwalkar was authorised to operate both the accounts of health centre and accused was not authorised to operate. PW-3 also admitted that even the specimen of signature of accused is not with the bank. PW-3 also states that in case of self cheques, the account holder has to collect the amount and there was no written instructions from Mrs. Panwalkar to pay the amount of self cheques of the centre to accused.

9 Evidence of PW-4 is crucial in as much as, PW-4 had admitted in his cross examination that it was Medical Officer who used to withdraw the amounts from the account of the health centre and Mrs. Panwalkar was the Medical Officer. PW-4 has further admitted that cash in hand of the centre was in the custody of the Medical Officer. PW-4 also admits that his evidence about fraud on the part of accused was hearsay. From the evidence of PW-3 and PW-4, it is quite obvious that it was Dr. Panwalkar, Medical Officer of the Health Centre, who was actually entrusted with the cash in hand and not accused. The innocence of accused is further proved by the defence witness, who had conducted departmental enquiry against accused. DW-1 has stated that during the departmental enquiry, it has come on record that accused would present cheques on the directions of Dr. Panwalkar for collection and after receiving the amount from the bank, accused would

hand over the cash to Dr. Panwalkar. This also confirms that cash of the health centre was in the custody of Medical Officer Dr. Panwalkar and therefore, it is quite obvious that prosecution has failed to prove entrustment of property to accused.

10 The Apex Court in ***Ghurey Lal V/s. State of U.P.***¹ has culled out 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 sections 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 :

1. (2008) 10 SCC 450

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.

11 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.

2. (2014) 5 SCC 730

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.

12 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.

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 acquittal, the presumption of his innocence is further reinforced, reaffirmed and

3. 1996 SCC (cri) 972

strengthened by the Trial Court. For acquitting accused, the Trial Court 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, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

15 Appeal dismissed.

(K.R. SHRIRAM, J.)

Gauri A.
Gaekwad

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