

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.154 OF 2009**

The State of Maharashtra)Appellant/Complainant

V/s.

Mangala Shankar Chinchawade)
Age : 45 years, Occu.: Service,)
R/o. Sanjana Heights, Plot No.12,)
Mental Hospital Corner, Yerwada,)
Pune – 411 006)Respondent/accused

Mrs. Anamika Malhotra, APP for State – Appellant.

Ms. Shraddha Sawant i/b. Mr. Hrishikesh Mundargi for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 12th FEBRUARY 2021

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 23rd May 2008 passed by the District Judge-1 and Special Judge (under P.C. Act) Pune, 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 According to prosecution, one Vimla Kishnani had filed a Special Civil Suit No.58 of 2000 in the Court of Civil Judge, Senior Division, Pune. Due to old age, Vimla Kishnani could not attend to the matter personally and therefore, gave a power of attorney to her son-in-law Kamlesh Giridharilal Sharma, complainant (PW-1), for prosecuting the said suit. After decree, execution application no.159 of 2002 was filed for recovery of the amount. Judgment debtor deposited the amount in the said

execution proceedings from time to time. On 2nd September 2003, judgment debtor deposited the balance amount of Rs.22,000/- in Court.

3 Accused was working as Junior Clerk in the said Court and was looking after the execution proceedings. After judgment debtor deposited the amount of Rs.22,000/-, accused informed complainant (PW-1) about the same. According to prosecution, accused promised to help PW-1 to withdraw the amount provided PW-1 gave a bribe of Rs.1,000/-. With reluctance, PW-1 paid a sum of Rs.600/- to accused. This demand was made on 2nd September 2003. Accused then informed PW-1 to pay the balance amount of Rs.400/- after withdrawing Rs.22,000/- and asked PW-1 to come to Court on 3rd September 2003 for collecting the cheque/pay order. Thereafter, PW-1 withdrew the amount of Rs.22,000/- on 2nd September 2003. On 3rd September 2003, PW-1 went to Anti Corruption Bureau and filed the complaint against accused. After the pre-trap formalities were completed, it was decided to trap accused on 3rd September 2003 while giving the balance amount of Rs.400/-. For the raid, PW-1 was accompanied by his wife and PW-2, the shadow panch. PW-1, PW-2 and the wife of PW-1 went to room no.215 where accused was sitting and after exchanging greetings, PW-1 asked accused for returning the original documents from file. Accused asked PW-1 to file an application. After collecting the application, accused asked PW-1 to wait for some time then closed the door and went away for lunch. After lunch, accused returned at which time in the presence of the wife of PW-1 and PW-2, accused informed PW-1 that the

work is not with her but is with another clerk. At that stage, one Advocate Mahesh came, who was also told about the application to be filed. Mahesh directed PW-1 to affix court fee stamp on the application and after affixing court fee stamp, application was given to accused. It seems PW-1 asked accused as to whether she was unhappy at which time accused informed him that he has collected the amount of Rs.22,000/- but paid her only Rs.600/- and the balance amount of Rs.400/- was not paid. Thereafter, accused collected the application and entered the Court hall and pointed to the lady clerk and informed complainant that the documents were with the lady clerk. The cheque was with the lady clerk. PW-1 approached the lady clerk and asked for the same. The lady clerk handed over the cheque to PW-1 and asked him to submit a photocopy of the cheque for the Court records. Complainant collected the original cheque and came out of Court for obtaining a photocopy and after obtaining photocopy, complainant met accused. Accused asked complainant to pay the balance amount as per the agreement. Complainant handed over the amount which accused received and kept it in her purse. Thereafter, complainant came out and gave the agreed signal. The raiding party rushed and caught accused red handed and found the tainted money in the purse of accused. Thereafter, post-trap formalities were completed, report made and after obtaining sanction, complaint was lodged and charges were framed. The Trial Court acquitted accused.

4 To drive home the charge, prosecution led evidence of three witnesses, viz., Ramesh Girdharilal Sharma, complainant as PW-1; Prajakta Jadhav, panch witness as PW-2; and Dayanand Dhome, Police Inspector and Anti Corruption Bureau Officer as PW-3.

5 It is prosecution's case that on 2nd September 2003 accused demanded a bribe of Rs.1,000/- for releasing the amount of Rs.22,000/- that was deposited by the judgment debtor in the Special Civil Suit No.58 of 2000 that was pending before the Civil Judge, Senior Division, Pune and on 3rd September 2003 after the amount was handed over to PW-1, accused was trapped having accepted a sum of Rs.400/-. The Trial Court acquitted accused because on 3rd September 2003 admittedly nothing was due from accused to complainant. PW-1, in his cross examination, has admitted that on 2nd September 2003 accused informed him about depositing the amount of Rs.22,000/- by judgment debtor and on that date, he had filed a pursis in the Court confirming that he has received the amount of Rs.22,000/- and decree holder does not wish to proceed in the matter. That document is at Exhibit 36 in the Special Civil Suit No.58 of 2000. In his cross examination, PW-1 further admits that since from beginning he has withdrawn various amounts from time to time but on no occasion did accused demand any bribe from him. In the cross examination, PW-1 says "*In darkhast proceeding one of the dates was 2/9/03. Judgment debtor deposited amount on said date and I have also filed application for allowing withdrawal of amount. On the same day I have withdrawn amount. On*

2/9/2003 entire amount was deposited as per decree. On same day darkhast proceeding has come to be disposed of on account of full satisfaction. It is true that I have collected original paper-cheque from one another lady clerk Mrs. Parkhi. At the time of withdrawal of amount on 2/9/03 my advocate was present with me till withdrawal of amount.”

PW-1 further says that even the original documents were handed over to him by the other lady clerk Ms. Parkhi. Therefore, the Trial Court came to a conclusion that there was no need for PW-1 to go back to accused and hand over any money to accused. PW-1 also says that various staff members were present in the room and PW-3 says in his cross examination that he has not recorded statement of any independent witnesses. The wife of PW-1 was always present but her statement has not been recorded and she also has not been called to testify. Advocate Mr. Mahesh, who was present on 3rd September 2003, also has not been examined. Ms. Parkhi, the clerk, who handed over the papers, also has not been examined. In my view, these three were very material witnesses, who ought to have been examined. The Apex Court in ***S. Harnam Singh V/s. The State (Delhi Admn.)***¹ has also held that non-production of material witnesses will cause miscarriage of justice. In this case, I would say, it amounts to serious irregularities vitiating the trial.

PW-1 says accused took the bribe money and put it in her purse. The button which was required to open the purse has not been checked for

1. 1976 (2) SCC 819

anthracene marks. PW-1 also admits that it would have indicated anthracene marks if it was examined. Therefore, other than this, there are various grounds raised in the impugned judgment, which for the sake of brevity, I am not reproducing. In the light of the above, it is clear that the evidence of PW-1 in respect of initial demand itself is not believable. The evidence of PW-1 in respect of demand and acceptance of amount on the date of trap is also not reliable.

6 The evidence of PW-2 is also not supportive for prosecution's case. Testimony of PW-2 reads as under :

"..... Witness volunteers that, prior to giving amount to Chinchwade Sharma asked as to whether anything has to be given. Chinchwade replied that, you should see what is to be given. It did not happen that, Chinchwade stated that, as per agreement you agreed to pay Rs.1,000/- to me after collecting amount of Rs.22,000/- yesterday you have paid me only Rs.600/- and not paid remaining Rs.400/-.

..... At this stage the learned Addl. PP prays for grant of permission to cross examine the witness as according to him the witness resiles from his previous statement. I am satisfied that there is sufficient force in the submission of the learned APP. Hence permission to cross examine the witness is granted.

Cross by APP, Smt. Pawar on behalf of State.

It is true that, A.C.B. Officer prepared panchanama as per my say. I do not recollect as to whether I have stated that Chinchwade stated that as per our agreement you agreed to pay amount of Rs.1,000/- after receipt of Rs.22,000/-. However, yesterday you have paid me only Rs.600/- and not paid remaining amount of Rs.400/-. I cannot assign any reason as to why portion marked A is written in spot panchnama dated 3/9/2003.....".

7 Ms. Sawant relied upon an unreported judgment of this Court in ***Ramdas Waman Tadge V/s. State of Maharashtra***², in which paragraph 16 reads as under :

2. Criminal Appeal No.497 of 2014 dated 22nd February 2019

16. *The Hon'ble Apex Court in the case of Selvaraj Vs. State of Karnataka [(2015) 10 Supreme Court Cases 230] has observed as follows:*

“The allegation of bribe taking should be considered along with other material circumstances. Demand has to be proved by adducing clinching evidence. Recovery of tainted money is not sufficient to convict the accused.

There has to be corroboration of the testimony of the complainant regarding the demand of bribe.”

The Apex Court further observed as follows:

“the prosecution has to prove the charge beyond reasonable doubt like any other criminal offence and the accused should be considered innocent till it is proved to the contrary by proper proof of demand and acceptance of illegal gratification, which is the vital ingredient to secure the conviction in a bribery case.”

The Hon'ble Apex Court in the case of C. Sukumaran Vs. State of Kerala [(2015) 11 Supreme Court Cases 314] has observed as follows:

“It has been continuously held by this Court in a catena of cases after interpretation of the provisions of Section 7 and 13(1) (d) of the Act that the demand of illegal gratification by the accused is the sine qua non for constituting an offence under the provisions of the act. Thus, the burden to prove the accusation against the appellant for the offence punishable under Section 13(1) (d) of the Act with regard to the acceptance of illegal gratification from the complainant PW2, lies on the prosecution.”

In the case of N. Sunkanna Vs. State of Andhra Pradesh [(2016) 1 Supreme Court Cases 713], the Apex Court held as follows:“

It is settled law that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7, since demand of illegal gratification is sine qua non to constitute the said offence. The above also will be conclusive insofar as the offence under Section 13(1) (d) is concerned as in the absence of any proof of demand for illegal gratification the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be established. It is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Unless there is proof of demand of illegal gratification proof of acceptance will not follow.”

In the case of C.M. Girish Babu Vs. CBI [(2009) 3 SCC779], the Apex Court has held as follows:

“It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accused charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence.

It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt.”

In the case of Trilok Chand Jain Vs. State of Delhi [AIR 1977 Supreme Court Cases 666], the Apex Court has held as follows:

“The degree and the character of the burden of proof which Sec. 4(1) casts on an accused person to rebut the presumption raised thereunder, cannot be equated with the degree and character of proof which under Section 101. Evidence Act rests on the prosecution. The presumption can be used in furtherance of the prosecution case and not in derogation of it. If the story set up by the prosecution inherently militates against or is inconsistent with the fact presumed, the presumption will be rendered sterile from its very inception, if out of judicial courtesy it cannot be rejected out of hand as stillborn.”

In the facts and circumstances of the present case, implicit reliance can be placed on the judgment of this Court in the case of Dnyaneshwar Laxmanrao Wankhede Vs. State of Maharashtra [2006 (1) Bom. C.R. (Cri.) 131], wherein the Court has observed as follows:

“In the result, the test to be applied is, whether the facts, primary to proof of facts of acceptance and payment of bribe was initially proved enough to the extent and level of the raising presumption, and if so, what is the weight of the defence raised by the accused was adequate enough to create preponderance of proof of his defence being factual and probable.”

It is incumbent upon the prosecution to prove demand and acceptance. Acceptance devoid of any demand would be of no significance. Especially when he accused has rebutted the presumption by demonstrating preponderance of probabilities. It is clear from the evidence of he complainant that the appellant had received the amount upon instructions of the coaccused. The de-facto complainant has no grievance against the present appellant at all.

8 Ms. Sawant also relied upon an unreported judgment of this Court in ***State of Maharashtra V/s. Mansing Shankarrao Mane and Anr.***³, in which paragraphs 19 and 20 read as under :

3. Criminal Appeal No.587 of 2004 dated 2nd March 2020

19. *The onus is on prosecution to prove beyond reasonable doubt, but even in situation where there are legal presumptions, the onus of accused is only to explain on the basis of preponderance of probabilities. In V. Sejappa V/s. State by Police Inspector Lokayukta, Chitradurga⁴, the Court was considering the presumption under Section 20, when it arises and what was the duty of court while invoking the provisions of Section 20. The Court after observing that the proof of demand is sine-qua-non for considering the offence under Section 7 of PC Act, held that initially burden of proving that accused accepted or obtained the amount other than legal remuneration is upon prosecution. It is only when such initial burden regarding demand and acceptance of illegal gratification is successfully discharged by prosecution, then burden of proving the defence shifts upon accused and a presumption would arise under Section 20 of PC Act. If the evaluation of the evidence and the findings recorded by the Trial Court do not suffer from any illegality or perversity and the grounds on which the Trial Court has based its conclusion are reasonable and plausible, the High Court should not disturb the order of acquittal if another view is possible and the view taken by the Trial Court also is possible, the Appellate Court should not interfere.*

20. *In State of Gujarat V/s. Navinbhai Chandrakant Joshi & Ors. the Apex Court held that the presumption under Section 20 of PC Act is rebuttable presumption, and that the burden placed on the accused for rebutting the presumption is one of preponderance of probabilities. Paragraph 11 of the said judgment reads as under:*

“11. So far as the presumption raised under Section 20 of the Act for the offence under Section 7 of the Act is concerned, it is settled law that the presumption raised under Section 20 of the Act is a rebuttable presumption, and that the burden placed on the appellant for rebutting the presumption is one of preponderance of probabilities. In C.M. Girish Babu Vs. CBI Cochin, High Court of Kerala (2009) 3 SCC779, this Court held as under:-

“21. It is well settled that the presumption to be drawn under Section 20 is not an inviolable one. The accuse charged with the offence could rebut it either through the cross-examination of the witnesses cited against him or by adducing reliable evidence.....

22. It is equally well settled that the burden of proof placed upon the accused person against whom the presumption is made under Section 20 of the Act is not akin to that of burden placed on the prosecution to prove the case beyond a reasonable doubt...”

Since it is established that the accused was possessing the bribe money, it was for them to explain that how the bribe money has been received by them and if he fails to offer any satisfactory explanation, it will be presumed that he has accepted the bribe.”

9 Therefore, the demand of illegal gratification by the accused is the *sine qua non* for constituting an offence under the provisions of the Act. The burden to prove the accusation against the accused for the offence punishable under the Act lies on the prosecution. It is also settled law that mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The fact that PW-1 complainant had already received the decretal amount on 2nd September 2003 and admittedly accused informed PW-1 that the work of handing over the amount was not with her raises a doubt on the demand. PW-1 says accused informed him that he has collected Rs.22,000/- but paid her only Rs.600/- and have not paid the balance amount of Rs.400/-. PW-2 in her testimony has denied that such a conversation took place. On the contrary, PW-2 says accused told that she had no concern with the papers and why again and again PW-1 was meeting her. On the date of the alleged trap no work was pending with accused and therefore, there was no reason for PW-1 to even meet accused on 3rd September 2003. PW-3, in his cross examination, has admitted that during the course of investigation, it was revealed that duty of accused was to write roznama of darkhast, prepare daily board of darkhast, prepare warrants and notices, take new matters on board and give dates in pending matters. PW-3 does not say that it was the duty of accused to hand over the payments received from judgment debtors. Infact PW-1 and PW-2 both say that accused directed them to meet Ms. Parkhi in the Court to collect their payments and PW-1

says he received the payment on 2nd September 2003.

10 The Apex Court in ***Ghurey Lal V/s. State of U.P.***⁴ 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.

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";

4. (2008) 10 SCC 450

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***⁵ 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.

5. (2014) 5 SCC 730

The Apex Court in *Ramesh Babulal Doshi V/s. State of Gujarat*⁶ 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.

11 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 her acquittal, the presumption of her 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.

12 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.

13 Appeal dismissed.

6. 1996 SCC (cri) 972

14 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 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.)

Gauri A.
Gaekwad

Digitally signed
by Gauri A.
Gaekwad
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