

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.308 OF 2009**

The State of Maharashtra)
(Through Bhosari Police Station)
District Pune)) ..Appellant

V/s.

1 Sanjay Mahadeo Mhetre)
Age: Adult, Occup. – Service)
R/o 921/A/2, Raviwar Peth,)
Pune)

2 Shri Hanumant Anna Pisal)
Age: Adult, Occup: Service)
R/o Sagar Hsg. Society, Plot No.9)
Udhamnagar, Pimpri, Pune) ..Respondents

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 5th July 2008 passed by the Learned District Judge-1 and Special Judge (Under PC. Act) Pune, acquitting respondents (accused) of the offence punishable under Section 7 and 13(1)(d) read with Section 13(2) and 12 of Prevention of Corruption Act, 1988.

2 It is prosecution's case that both the accused were working as Bailiff in the Court at Dhule. PW-1 complainant - Sunil Naik had a matrimonial

dispute going on with his wife and had to pay maintenance to his wife. On the failure of P.W.-1 to deposit the maintenance amount, the court had issued recovery warrant of Rs.20,000/-. On 13th January 2005 when the Bailiff went to the house of complainant for attachment of the property, the mother of complainant deposited the amount of Rs.20,000/-. On 15th January 2005, accused nos.1 and 2 informed complainant that there was a likely hood of another warrant being issued for attachment of the flat, if they want to avoid the attachment they must pay a bribe of Rs.4000/-. Complainant bargained and reduced the figure to Rs.1000/- and went to lodge the complaint with ACB. Pre-trap formalities were completed and raid was effected on 17th January 2005. After the raid, tainted notes were recovered from accused no.1 and the accused were arrested under panchnama. After obtaining sanction, prosecution was commenced, charges were framed and the accused pleaded not guilty and claimed to be tried.

3 To prove its charge, prosecution led evidence of three witnesses. P.W.-1 Sunil Uddhav Naik- complainant, P.W.-2 Vilas Baban Thorat as panch witness and P.W.-3 I.O. Hemant Vasudeo Bhat. Sanctioning authority was not examined because sanction was not disputed.

4 I have perused the impugned judgment along with evidence with the assistance of the Learned APP. I do not find any illegality with the conclusions arrived at by the Trial Court. I have to also note the complaint does not disclose about the resistance by the family of P.W.-1 on 12th January 2005 when the Bailiff went to execute the warrant or that on 13th January

2005 the Bailiff went with police force for execution. This also shows the nature of P.W.-1. I have to also note that P.W.-1 is a man, who was in breach of orders passed by the court and had not participated in maintenance proceedings filed by his wife and not complied with the orders passed by the court because of which, execution of warrant of attachment of property had to be issued. How can the court rely on the evidence of such a man?

5 On the first demand, P.W.-1 in his cross-examination says 4 to 5 days before filing the complaint, the accused had telephonic talk with him and over telephone he was informed that his wife was going to obtain order for his arrest. Whereas, the complaint (Exhibit 10) says that demand was made by accused no.2 by visiting the workshop of complainant on 15th January 2005. P.W.-1 in his cross-examination says 4 to 5 days before filing the complaint on 17th January 2005, the accused had a telephonic talk with him, which means the talk must have happened on 12th or 13th January 2005. The documents indicate that the warrant of attachment was executed on 13th January 2005 at which time, P.W.-1 was not present at home and to avoid an attachment, his mother deposited Rs.20,000/-. Even on 12th January 2005, the Bailiff had gone to P.W.-1 for execution of warrant, at which time the family members of P.W.-1 obstructed the execution of warrant. The Bailiff, therefore, went to the police and went back on 13th January 2005 for attachment with the help of police and accompanied by the wife of P.W.-1-complainant for execution of warrant. P.W.-3- I. O. in his cross-examination admits that during the course of his investigation, it was

revealed that on 12th January 2005, when the Bailiff went for execution of warrant, some quarrel had taken place in the house of complainant and, therefore, on the next date the Bailiff reached the house of complainant accompanied by the police for execution of warrant. In such a situation, it is not possible to believe that on 12th January 2005 or 13th January 2005, the accused may have contacted P.W.-1 over telephone and demanded the bribe of Rs.4000/-.

6 The accused have also placed on record the statement submitted by Idea Cellular Ltd., Service Provider for the telephone of the accused, which shows that before 17th January 2005 no calls had been made by the accused to P.W.-1- complainant. That also confirms that the accused could not have made the demand as alleged by P.W.-1.

7 It is also alleged in the complaint Exhibit 10 that on 15th January 2005, accused no.2 went to the work shop of P.W.-1 complainant and informed him about the proposed warrant to be issued on 20th January 2005 and demanded Rs.4000/-. If that was so, there would have been others in the work shop and none of them have been called to testify. P.W.-1 is the only witness for the demand of bribe.

8 In the complaint, P.W.-1 says that when the warrant was executed on 13th January 2005, 14 to 15 persons including the Bailiff, police etc., were present. In the complaint, it is also stated that out of those 14 or 15 persons, two were the accused, i.e. accused nos.1 and 2. But in his cross-examination, P.W.-1 says he does not know whether the accused were

present on 13th January 2005.

9 On the issue of demand and acceptance, P.W.-1 says after he and P.W.-2 entered his work shop and sat in the cabin, he received a telephonic message from accused no.2, informing P.W.-1 that he was coming with accused no.1. But in his cross-examination, P.W.-1 says after he reached the work shop, he gave a telephone call to accused no.2 asking him to come immediately. P.W.-2, the shadow panch also says after reaching the work shop P.W.-1 gave a call to accused no.2 over telephone and asked him to come immediately. This is supposed to have happened around 3.25 p.m. But the call register indicates that P.W.-1 had called accused no.1 as they were known to each other at about 9.34 a.m. and the duration of call was only 36 seconds. Thereafter, P.W.-1 called accused no.2 at 9.36 a.m. and the duration of call is 45 seconds. Again on 12.40 p.m. P.W.-1 has called accused no.1 and the duration is 156 seconds. Again at 3.23 p.m. P.W.-1 has called accused no.2 and the duration is 93 seconds. P.W.-1 does not dispute that he had made 4 calls to the accused. If prosecution's case had to be believed that the accused went to the work shop of P.W.-1 to collect the bribe amount, there was no need of P.W.-1 making 4 calls to the accused. This makes feel the court that accused no.1 is economical with truth. The fact is there are multiple cases pending against P.W.-1 and both the accused have been visiting the work shop of P.W.-1 for execution of warrant and serving orders and that was P.W.-1 and accused are known to each other.

10 On the date of trap, P.W.-1 says accused no.2 gestured the demand of bribe with his fingers, whereas P.W.-2 does not say anything to that effect. In fact, P.W.-2 in his cross-examination admits that in his presence the accused have not specifically made any demand.

P.W.-2 says after the raid, from the pocket of accused no.1 tainted notes, mobile, diary and pen were recovered. But only the notes were examined under the U.V. Lamp. P.W.-3, I.O., however, says that all the belongings of the accused were examined under U. V. Lamp, but no traces of anthracene powder were seen. I have to observe that if the tainted notes were kept in the same pocket alongwith the other belongings, then certainly those other belongings like cell phone or diary or pen also would have come in the contact with the tainted notes. Despite this, P.W.-3 says no traces of anthracene powder were found in these personal belongings. The trap panchnama, however, does not mention anything about examining the personal belongings of accused no.1.

11 One has to note that P.W.-3 in his cross-examination has admitted that the complaint does not bear the date after his signature and the signature of complainant and similarly pre-trap panchnama does not bear any date after the signatures. So also Exhibit 15, the post trap panchnama.

12 P.W.-1 states after execution of warrant on 13th January 2005, no other warrant was issued and that he has been depositing amount from time to time and nothing was pending. According to P.W.-1, after recovery of amount of Rs.20,000/-, no other application was pending in court. This has

also been confirmed by the I.O. In such circumstances, it is difficult to digest that the accused had approached complainant and told him that there was likely hood of another warrant being issued on 20th January 2005 because it is not the case of prosecution that if after the complainant's mother deposited Rs.20,000/- on 13th January 2005, some other amounts were due. P.W.-1 appears to be well acquainted with court proceedings and would have certainly been aware that when all amounts are repaid, the question of any fresh warrant to be issued would not arise. P.W.-1 also admits that on earlier occasions, the accused had served the summons on him but never demanded any bribe. The demeanor of P.W.-1 has also been recorded by the Trial Court.

13 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 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

¹(2008)10 SCC 450

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 Karnataka² 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

2(2014) 5 SCC 730

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 respondents and such presumption is strengthened by the order of acquittal passed in their 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.

14 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 the accused.

15 There is an acquittal and therefore, there is double presumption in

³1996 SCC (cri) 972

favour of accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless they are proved guilty by a competent court of law. Secondly, the accused having secured their acquittal, the presumption of their 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.

16 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.

17 Appeal dismissed.

18 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 the 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 the 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.)