

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.349 OF 2009**

The State of Maharashtra)
(Through P.I., Anti Corruption Bureau,)
Satara, District – Satara)Appellant/Complainant

V/s.

Ashok Balasaheb Nimbalkar)
Occupation : Service,)
R/o. “Shri” Building,)
Flat No.6, Dhankawadi, Pune)Respondent/accused

Mrs. Anamika Malhotra, APP for State – Appellant.
Mr. Vivek Rane i/b. Mr. Vijay Killedar for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 12th FEBRUARY 2021**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 20th September 2008 passed by the Special Judge, Satara, 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 It is the case of appellant that accused was working as P.S.I. in Barad Police out post of Phaltan Police Station in August 2005. At that Police Station, a crime had been registered pursuant to an FIR filed by one Ramesh Kisan Makar against 18 individuals for various offences under the provisions of Indian Penal Code (IPC). Accused was investigating the matter. One Gulabrao Ramchandra Dadas, who is complainant (PW-1), had made a

complaint to the DY. S.P., Anti Corruption Bureau, Satara on 29th August 2005 about a demand for illegal gratification made by accused to him. According to PW-1, he had called upon accused to lodge a complaint against one Avin Arjun Makar having kidnapped a daughter of his relative Balu Bhiku Pokale. It is alleged that Balu Bhiku Pokale and some three to four persons had gone to the house of Arjun Makar on 27th July 2005 to know the whereabouts of Pushpa, the daughter of Balu Bhiku Pokale, at which time an altercation took place and some persons from both the sides were injured. Arjun Makar registered a crime in Barad Police out post but the complaint of Balu Bhiku Pokale was not registered. About 15 persons from the side of Balu Bhiku Pokale were arrested and kept in jail.

3 It is alleged that PW-1 met accused in the evening of 26th August 2005 at Phaltan and learnt that the father of Balu Bhiku Pokale, i.e., Bhiku Laxman Pokale, who was 80 years old and two other old persons from his family, were likely to be arrested though they were not at all concerned with the incident that took place on 27th July 2005. At that time, accused made a demand of Rs.25,000/- as bribe if PW-1 did not want those three old relatives to be arrested. PW-1 then paid Rs.20,000/- to accused with a promise to pay the balance Rs.5,000/- later. Accused told PW-1 to bring the balance amount of Rs.5,000/- to his house in the evening of 29th August 2005 at Phaltan. On 29th August 2005 in the morning PW-1 spoke to accused over telephone at about 9.00 a.m. and asked at what time he should meet him at his residence. Accused told complainant (PW-1) to

come at about 4.00 p.m. and if he did not pay that amount, accused will arrest those three persons.

4 DY. S.P., Anti Corruption Bureau (PW-4) recorded the complaint of PW-1 on the same day and called two panch witnesses from the Forest Office at Satara. Thereafter, pre-trap formalities were carried out and it was decided to trap accused at the time of giving the balance amount of Rs.5,000/-.

5 At 4.00 p.m. when PW-1 complainant and PW-2, the shadow panch witness, went to the house of accused, the door was found to be locked. Therefore, PW-1 called accused over telephone and accused asked PW-1 to wait till about 7.00 – 7.30 p.m. when he would return from Satara. At about 7.30 p.m., accused returned on a motor cycle with someone else and invited PW-1 and PW-2 inside the house and sat on the cot. Accused thereafter, accepted the bribe amount of Rs.5,000/-, put it in his wallet which he had removed from his hip pocket and placed the wallet back in the hip pocket. Thereafter, PW-1 gave the agreed signal and the raid took place. Accused was caught red handed with the bribe amount in his wallet which was in his hip pocket. Subsequently, post-trap formalities were completed, report registered, investigation commenced and after obtaining the sanction from PW-3, the complaint was lodged. Charges were framed. Accused pleaded not guilty. According to accused on 26th August 2005, when he is alleged to have demanded first time the bribe amount, accused was in

Village Rajuri because panchayat elections were going on and he could not have been in Phaltan where the alleged demand is supposed to have been made. Accused also stated that on 26th August 2005 there were riots in Village Rajuri in which he also got injured. Accused has also relied on medical reports. Accused then lodged an FIR against some 18 persons of which many were arrested and their bail applications were rejected. It is also stated that in the Police Station there was an argument between accused and PW-1 and therefore, PW-1 has lodged this complaint. Accused has also stated that even the three relatives of PW-1, who were listed as accused in the complaint lodged by accused, had applied for anticipatory bail and accused had opposed the anticipatory bail application.

6 To drive home the charge, prosecution had given a list of 20 witnesses but ended examining only 4 witnesses, viz., Gulabrao Ramchandra Dadas, complainant as PW-1; Ramchandra Bapu Taware, shadow panch as PW-2; Kausalkumar Pathak, sanctioning authority as PW-3; and Netaji Bhausahab Shinde, the Investigating Officer as PW-4.

7 The Trial Court after considering the evidence acquitted accused. I have considered the evidence recorded and the impugned judgment and documents with the assistance of learned APP. In my view, the order of acquittal cannot be faulted.

8 It is well settled that the allegation of bribe taking should be considered alongwith other material circumstances. Demand has to be

proved by adducing clinching evidence. Recovery of tainted money is not sufficient to convict the accused. The onus is on the prosecution to provide proper proof of demand and acceptance of illegal gratification, which is the vital ingredient to secure the conviction in a bribery case (***Selvaraj V/s. State of Karnataka***¹). The demand of illegal gratification by the accused is the *sine qua non* for constituting an offence under the provisions of the Act (***C. Sukumaran V/s. State Of Kerala***²).

The Apex Court in ***N. Sunkanna V/s. State of Andhra Pradesh***³ has held 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.

9 In this case, according to prosecution complainant met accused on 26th August 2005 at Phaltan at which time accused demanded illegal gratification for not arresting the three relatives of complainant. Defence has, however, proved that accused was on fixed point duty at Rajuri Village on that day (Exhibit 35). Similar was the duty position on 27th August 2005 (Exhibit 36). This has been accepted by PW-3, the sanctioning authority. PW-3 has also admitted that an offence was registered in Police Station for the rioting that occurred at Rajuri on that day and accused was complainant on behalf of the State in the offence of rioting. Even the Investigating Officer

1. 2015 (10) SCC 230

2. 2015 (11) SCC 314

3. 2016 (1) SCC 713

(PW-4) admits that accused was on fixed point duty at Rajuri Grampanchayat election on 26th August 2005 and 27th August 2005. Therefore, when accused was on panchayat election duty on 26th August 2005, prosecution has not proved that accused was present in Phaltan on 26th August 2005 and therefore, has failed to prove the demand. The defence has also produced the injury certificate of accused dated 26th August 2005 at Exhibit 57/6, which indicates that the accused was injured and he was referred to Public Health Centre, Barad at about 3.50 p.m. on 26th August 2005 and there were three injuries found on his body. Therefore, in such circumstances, there cannot be an occasion for accused to come to Phaltan Police Station leaving his fixed point duty at Rajuri. In the circumstances, the defence raised by accused that he was never present near Police Station at Phaltan on 26th August 2005 appears to be probable. Strangely, the Investigating Officer (PW-4) has not even verified these facts and circumstances after accepting the complaint made by PW-1.

10 As held by the Apex Court in *V. Sejappa V/s. State by Police Inspector Lokayukta, Chitradurga*⁴ the defence of accused was that he was attending the seminar in Bangalore and it was probable. Therefore, there was failure of prosecution to prove that accused demanded bribe amount on relevant date. Hence, accused was entitled to be acquitted. Therefore, since the prosecution has failed to prove the demand, the Trial Court was correct in acquitting accused. One more point which is very relevant to note is that the

4. AIR 2016 SC 2045

defence of the accused is not an afterthought because PW-4, the Investigating Officer, has in his cross examination admitted that he recorded the statement of the accused after the trap at which time accused explained that after coming out from the outside he entered the bathroom for refreshing and while he was wearing his pant, complainant and one Lakade, whose statement has not been recorded and who has not been examined and Lakade was the friend of complainant who was present throughout the trap, told accused that his wallet, which was kept in the hip pocket, was coming out.

11 If ones scrutinize the evidence of PW-1 and PW-2 with reference to the incident of actual trap on 29th August 2005, again the success of the trap itself raises lot of questions. PW-1 says that they were waiting for two hours behind the forest office for accused to return from Satara but PW-2, the shadow panch, in his cross examination says that they went to Makad-Mal, which is at a distance of 1 ½ k.m. to 2 k.m. from Phaltan Police Station and waited there for two hours. PW-2 further states that they waited there upto 7.00 p.m. and thereafter, came to the house of accused directly at about 7.15 p.m. PW-2 also says at that time they met one Ramchandra Lakade, who was known to complainant and they had a talk. This Ramchandra Lakade, according to PW-2, went away after he met PW-1 and PW-2 whereas, PW-1 in his cross examination states that Rambhau Lakade was alongwith him at the time the bribe was given and the wallet was put in the pocket. PW-4, the Investigating Officer, is totally silent about

Ramchandra Lakade. PW-4 also does not say where they waited for two hours for accused to return home. Ramchandra Lakade finds no mention even in the post-trap panchnama. His statement has not been recorded nor was he summoned to testify.

12 PW-1 mentions about the second demand by accused on 29th August 2005, whereas PW-2 is silent about it. Even the trouser of the accused has not been seized. There is no evidence as to whether inside of the wallet was checked for anthracene marks. It is not even mentioned in the post-trap panchnama that inside portion of the pant of accused was checked under ultraviolet lamp and whether traces of anthracene powder were found or not. Post-trap panchanam was not made in the premises of the residence of the accused but was made in the Police Station and there is no explanation given for deviating from the rules mentioned in the manual of instructions in Anti Corruption cases as well as other prescribed rules.

13 There are various other reasons given, which for the sake of brevity, I am not reproducing. Suffice to say, I agree with the findings of the Trial Court.

14 The Apex Court in ***Ghurey Lal V/s. State of U.P.***⁵ 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

5. (2008) 10 SCC 450

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***⁶ 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***⁷ 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

6. (2014) 5 SCC 730

7. 1996 SCC (cri) 972

conclusions.

15 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.

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 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.

Gauri A.
Gaekwad

Digitally signed
by Gauri A.
Gaekwad
Date:
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(K.R. SHRIRAM, J.)