

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 733 OF 2004**

The State of Maharashtra

....Appellant
(Orig. Complainant)

V/s.

1. Dnyandeo Vithal Lakade
Age : 54 years,
Occup.: Service
2. Minakshi Dnyandeo Lakade
Age : 49 years,
Occup.: Household
3. Amol Dnyandeo Lakade
Age : 28 years,
Occup.: Education
4. Sangram Dnyandeo Lakade
Age : 27 years,
Occup.: Education
5. Sagar Dnyandeo Lakade
Age : 24 years,
Occup.: Education
All R/at Nira, Taluka – Purandar,
District – Pune.

....Respondents
(Orig. Accused)

Ms. M.M. Deshmukh, APP for State.

Ms. Heena Suvarnakar i/b Mr. K.S. Patil for Respondent Nos.1 to 5.

**CORAM : K.R.SHRIRAM, J.
DATED : 30th JUNE, 2021.**

ORAL JUDGMENT :

1. This is an appeal impugning an order and judgment dated 31st May, 2003 passed by the Special Judge, Baramati at Baramati acquitting the respondents (hereinafter referred as accused) of offence punishable under Section 13 (2) (*Criminal misconduct by a public servant*), r/w Section 13 (1) (e)

of the Prevention of Corruption Act, 1988 and under Section 109 (*Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment*) of the Indian Penal Code.

2. This is a case where the state should not have even approached the court by way of this appeal. Having perused the evidence and the impugned judgment with the assistance of learned Addl. PP. and Ms.Suvarnakar for respondents, I would agree with the observations of the trial court that this is an example of the worst investigation and a deliberate harassment to all accused. If one considers the examination-in-chief of the prosecution and for a moment not look at the cross-examination, still absolutely no offence is made out against accused.

3. It is the case of prosecution that Accused No.1 who has since expired joined as Junior Engineer in Irrigation Department in the year 1973. In the year 1980 he was promoted as Deputy Engineer at Takli Sikandar, Bhima Patbandhare, Up-Vibhag, District Solapur. He was Class II Government Servant. Accused No.2 is wife of Accused No.1 and Accused Nos.3, 4 and 5 are sons of Accused Nos.1 and 2. It has come on record that when the FIR was lodged Accused No.3 Amol had already completed his Diploma in Engineering and was doing some construction business and Accused No.5 Sagar had completed his course in engineering. It appears Accused No.4 Sangram was studying M.B.B.S.

4. It is the case of prosecution that Accused No.1 for the period 1973 to 1995 had a total income of Rs.12,86,009/- from all sources. The total expenditure of the family of accused was Rs.18,60,490/- for the said period and therefore the expenditure of the family was more than the total income to the extent of Rs.5,74,481/-. It is also alleged that the total assets and property of accused is Rs.20,20,889/- and that would mean that accused had accumulated assets and property disproportionate to the income of the family by a sum of Rs.25,95,370/-. It is alleged that Accused Nos.2 to 5 have abetted Accused No.1 to accumulate the said property and assets.

5. P.W. 1 Dy. S.P. Ramchandra Awade of A.C.B. Pune therefore drew such an inference and lodged FIR at Baramati City Police Station on 29/12/1998. Accordingly a crime was registered and investigation was commenced by P.W. 1 himself at the initial stage. It is also alleged by prosecution that before lodging FIR by P.W. 1 a preliminary inquiry was made by two other police inspectors of A.C.B. Pune and the FIR is based on the report of that preliminary inquiry. Admittedly, preliminary inquiry report is not brought on record. After completing investigation, charge-sheet was filed and accused pleaded not guilty. According to accused, and rightly so, the investigation was not done properly. Prosecution has not taken into consideration all the figures of income and expenditure properly and that they were called by the Investigating Officer P.W. 4 Suresh

Deshpande on several occasions and illegal demand of money was made to them by P.W. 4 Deshpande. As they did not pay amount this false charge-sheet has been filed only to harass them.

6. To bring home the charge, prosecution has examined four witnesses viz., Ramchandra Raghunath Awade, Dy. S.P., Complainant as P.W. 1, Dnyaneshwr Rajaram Shinde, Agricultural Officer as P.W. 2, Jyo Sebastian D'souza, Ex-Principal of Shivaji Preparatory Military School, Pune as P.W. 3 and PI Suresh Sudhakar Deshpande, Investigating Officer as P.W. 4.

7. P.W. 1 Ramchandra Raghunath Awade has admitted that papers of preliminary inquiry based on which he drew an inference against accused and the FIR was lodged has not been produced on record. He does not know where those papers are. Therefore, the entire foundation of the case is itself lost.

P.W. 1 also admits in his deposition that he simply lodged FIR on 29/12/1998 and on the next date, i.e., on 30/12/1998 he was transferred and he does not know anything about further investigation. He also says that he has not personally gone through the record of the dairy business of accused and other business and he did not go through the receipts of those income of accused or that he never called upon accused to submit receipts or papers of the total income and expenditure before lodging FIR. P.W. 1 has lodged FIR purely on the basis of letters that he received from his superior

officer and he has no personal knowledge.

P.W. 1 says after he received letter from his superior officer he gave directions to the officers of Pune and Satara A.C.B. to visit other houses and property of accused and to do the needful. If he himself was the Investigating Officer of the crime, there is no explanation as to why he did not go personally to Pune and Satara to investigate and how could he delegate the job to somebody who had no concern with the investigation.

8. P.W. 1 says that one Police Inspector Atmacharan Shinde and another Police Inspector Kohinkar have conducted preliminary inquiry. Not only their report is not on record even these persons have not been called to testify. Perhaps these two persons in their preliminary report have opined that there was no disproportionate income of accused otherwise why would the preliminary report of these two person has been kept away from the court. The complainant has admitted that in the FIR expenditures have been repeated. It has not been mentioned in which year the expenditures were incurred and that certain properties were jointly in the name of Accused No.2 and brother of Accused No.1. But the expenditure on these properties have been added to the expenditure of Accused No.1. P.W. 1 has admitted that one of the property Amol Bunglow which stood in the name of Accused No.2 and brother of Accused No.1 has been shown as that of Accused No.2 and he says that he mentioned total figure because it was mentioned in the preliminary inquiry report. That itself shows non

application mind of P.W. 1 and perhaps it was another reason for not producing report of preliminary inquiry.

9. P.W. 1 says that chart of income and expenditure etc., was prepared by one PI Mane who is not a witness. P.W. 1 says that in the FIR he has shown total income of Rs.12,86,000/-, total expenditure of Rs.18,60,490/- and the value of total assets is shown as Rs.20,20,889/-. But he admits that in the chart prepared by PI Mane which is at Exh.171, the total assets is shown as Rs.11,41,997/-. He further admits that total income shown by him in the chart is Rs.25,96,440/- and the total expenditure is Rs.20,14,725/- but he does not know how the difference has arisen. There are many such defects.

P.W. 1 says he does not know that father of Accused No.1 is having ancestral property and he does not know if they had different business of trucks, tractors etc., even though in the FIR, it is mentioned that Accused No.1 has ancestral land and huge ancestral agricultural land at different places in Pune and Satara district. Still the complainant has not taken into consideration income of these agricultural lands in proper perspective. P.W. 1 admits that total income for 20 years, he has taken from agricultural land was Rs.2,80,000/- only but is unable to answer can such large parcels of ancestral land amount as mentioned in the FIR fetch only this much amount in 20 years.

10. There are many such other defects in the evidence of P.W. 1 noted by the Trial Court.

11. P.W. 2 Dnyaneshwr Rajaram Shinde is an Agricultural Officer of Pune and he says at the material time one Takalkar was working as Statistician and Takalkar has sent some letters to A.C.B. Pune. P.W. 2 says he has no personal knowledge about the assessment made by Takalkar and Takalkar is not a witness.

12. P.W. 3 Jyo Sebastian D'souza states that the information regarding fees of Accused No.3 and Accused No.4 was prepared by clerk and not by him and the concerned clerk has not been examined. P.W. 3 also says that there is no record to show that Accused No.3 and Accused No.4 were studying in their school in the year 1980 to 1984.

13. P.W. 4 PI Suresh Sudhakar Deshpande says that he took search of flat and prepared panchanama though these flats were not in the jurisdiction of his police station. In his cross-examination P.W. 4 admits that he has not shown any income or expenditure for the period 1996, 1997 and 1998 or made any inquiry. P.W. 4 says that prior to him one Kohinkar made inquiry in this matter and he has not seen all the papers of that inquiry conducted by Kohinkar.

P.W. 4 says that there is Gift Deed on record of a land worth Rs.4,00,000/- but that has not been considered.

14. Therefore, in view of the number of mistakes in the figures of income and expenditure and the fact that various other income have not been correctly considered and the fact that figures of income and expenditure shown by complainant were based on incorrect preliminary inquiry report, the Trial Court has rightly concluded that the prosecution has miserably failed to prove the charge against accused. Though sons of Accused No.1 and Accused No.2 were already doing business, their income have not added in the preliminary inquiry report.

15. In the circumstances, conclusion arrived at by the Trial Court cannot be faulted and no interference is called for.

16. The Apex Court in ***Ghurey Lal Vs. 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.

1 (2008) 10 SCC 450

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.

17. The Apex Court in many other judgments including ***Murlidhar & Ors. Vs. 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.

18. The Apex Court in ***Ramesh Babulal Doshi Vs. 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.

2 (2014) 5 SCC 730

3 1996 SCC (cri) 972

19. I have perused the impugned judgment, considered the evidence, also heard Ms. Deshmukh, learned APP and Ms. Heena Suvarnakar. 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.

20. There is an acquittal and therefore, there is double presumption in favour of the 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, accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting accused, the Sessions Court rightly observed that the prosecution had failed to prove its case.

21. 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.

22. Appeal dismissed.

23. The Government/Appropriate Authority shall pay over to Respondent Nos.2 to 5, 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 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 30 days.

After 30 days interest at 12% p.a. will have to be paid by Government/Appropriate Authority to Respondent Nos.2 to 5.

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.)