IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 506 OF 2008

The State of Maharashtra ….Appellant
(Orig. Complainant)

V/s.

Shailaja Kusaram Sarda,
Age : 35 years,
Occu. : Service,
Residing at : New Era Society,
Plot No.2, Market Yard, Pune. ….Respondent
(Orig. Accused)

Ms. Anamika Malhotra, APP for State.
None for Respondent.

CORAM : K.R.SHRIRAM, J.
DATED : 6th JANUARY, 2021.

ORAL JUDGMENT :

1. This is an appeal impugning an order and judgment dated 30th July, 2004 passed by the Special Judge, Pune acquitting respondent (hereinafter referred as accused) of offence punishable under Section 7 (*Public servant taking gratification other than legal remuneration in respect of an official act*), Section 13 (1) (d) r/w 13 (2) of the Prevention of Corruption Act, 1988.

2. It is the case of prosecution that accused was working as Additional Registrar Co-operative Society (Milk), Pune. The complainant P.W. 1 and 52 others from village Malwadi, Taluka Baramati, District Pune decided to form a Co-operative Society under the name "Trimurti Shelya

Mendya Sahakari Sanstha” with an object to maintain sheeps and goats and sell their milk. They wanted the society to be registered and for that P.W. 1, on 02/05/1997, went to the office of accused and met accused. Further he gave details regarding the society to be formed and the objects of the society. Certain forms were given to P.W. 1 for opening a bank account. Accused tick marked the documents required for registering the society and asked P.W. 1 to do the needful. On 06/05/1997, P.W. 1 met accused and submitted all the documents. Accused perused the documents and asked complainant P.W. 1 to come after 10 days. P.W. 1 requested accused to give permission to open the bank account and after 10 days he will come to register the society. At that time, accused allegedly told P.W. 1 to pay a sum of Rs.1,500/- as illegal gratification alongwith documents to be submitted. When P.W. 1 asked accused reason for the payment, accused told P.W. 1 that unless the amount of Rs.1,500/- is paid, society will not be registered. The complainant informed accused that the payment of Rs.1,500/- was very high as members of the society were poor farmers and requested accused to reduce the amount. But accused refused to reduce the amount and said that unless the amount is paid society will not be registered. P.W. 1 therefore agreed to pay the amount of Rs.1,500/- and requested accused to grant permission to open the bank account.

Accused addressed a letter to Deputy Chairman, Sheep Farm, Gokhale Nagar, Pune and asked P.W. 1 to submit the letter to the office of Deputy Chairman and get a certificate from there, after which permission will be granted to open the bank account. As concerned officer there was on leave, P.W. 1 went again on 14/05/1997 and met clerk Mr. Shetty who caused the certificate to be issued. P.W. 1 on 15/05/1997, at 11.00 a.m., went to meet accused with the certificate given by Mr. Shetty. In the office of accused, he met clerk Mr. Shinde who informed him that accused had gone for a meeting and then spoke to accused on telephone and informed about P.W. 1's presence in the office. Mr. Shinde handed over telephone to P.W. 1 and P.W. 1 spoke to accused. Accused informed P.W. 1 to hand over the certificate to Mr. Shinde and said that Mr. Shinde will give him application for opening bank account and he should bring that form to her and she will sign the form and address where she could be found was with Mr. Shinde. The complainant P.W. 1 handed over telephone to Mr. Shinde who after speaking to accused collected the certificate from P.W. 1 and gave him two bank account opening forms and a letter addressed to Pune District Central Co.operative Bank Ltd. P.W. 1 was advised to obtain signature of accused and then submit the same to the bank.

The complainant went to Common Wealth Building, Laxmi Road, Pune on ground floor, office of the Regional Deputy Registrar Co. operative Society (Milk) Pune. When he reached, he was informed that accused was busy in a meeting and he waited till 1.15 p.m. When accused came out from meeting, accused asked P.W. 1 whether he has brought the forms and after signing the forms handed it back to complainant. P.W. 1 was also advised to bring bank pass book on 29/05/1997 at 3.00 p.m. at which time he shall give Rs.1,500/- bribe as agreed and then accused will register the society. After saying that accused went back to the meeting. After opening the bank account and depositing a sum, a doubt came in the mind of the complainant as to whether accused will issue registration certificate of the society without paying bribe amount. Therefore, complainant consulted the others who were with him to form a society, and based on collective decision taken went to the office of Anti Corruption Bureau and lodged the complaint. Strangely nobody accompanied him to the office of Anti Corruption Bureau. Pre-trap procedures were followed and panchanama was prepared and it was decided to lay a trap on 29/05/1997.

3. P.W. 1 complainant with shadow panch Jagdish Damodar Kande went to the office of accused while others in the raiding party waited outside. P.W. 1 and P.W. 2 meet the clerk Mr. Shinde (who has not been examined) who took them to accused and when complainant submitted the form accused asked the complainant as to whether he has brought the amount. Then, after signing the documents, accused asked P.W. 1 to get it entered in the outward register and accordingly he went to meet the concerned clerk and deposited Rs.25/- as fees. After preparing the certificate P.W. 1 was directed to go back to accused where he met accused in her office. After signing the certificate accused demanded bribe amount from P.W. 1. P.W. 1 was taking out the bribe amount from his pocket. Accused placed an envelope in front of P.W. 1 on the table and asked P.W. 1

to place the bribe amount in the envelope. P.W. 1 did so as instructed. Accused took the envelope by her right hand and kept it in the drawer of her table. The complainant went out to give signal at which time accused took out money by her right hand and dropped it in her carry bag which was on right side of her chair by lifting the bag by her left hand. After complainant gave the signal, raiding party came in, caught hold both hands of accused and when checked under ultra violet light anthracene powder was found on the tips of thumb of accused and the adjoining fingers of her right hand. The envelope containing the bribe amount was found in the carry bag kept on the right hand side of her chair. The envelope was seized. After completing post-trap formalities, report was filed and after obtaining sanction, charge-sheet was filed. Accused pleaded not guilty and claimed to be tried.

4. As it appears from the suggestions made in the cross-examination and in the statement of defence filed by accused, the defence is of total denial and false implication because P.W. 1 was annoyed with accused. The reason being accused had granted permission for registration of another society in the village of P.W. 1. Against that permission being granted complainant preferred an appeal but the appeal came to be dismissed. Revision Application has been filed before the Joint Registrar Co-operative Society (Milk) which is pending since 1997. It is also the case of defence that the application for opening account submitted by P.W. 1 was

filed in the office only on 06/05/1997 and the application with a report was sent to Deputy Director Animal Husbandry for his views. The reply was received on 14/05/1997 and thereafter on 15/05/1997 accused granted permission for opening account. It is also contended by defence that until 29/05/1997 the application for registration of co-operative society was not filed as it was received only on 29/05/1997. Mr. Shinde who has not been examined, scrutinize the application and after compliance Mr. Shinde prepared the registration certificate and took it to accused who signed the certificate. Mr. Shinde took that certificate out of cabin of accused and thereafter accused does not know what happened. Accused has denied that she ever demanded any bribe or that she kept envelope on the table or the envelope containing bribe amount was kept in her carry bag. Moreover, accused has even denied that the carry bag belonged to her.

5. To bring home the charge, accused led evidence of only four witnesses namely Sanjay Maruti Danawale, Complainant as P.W. 1; Jagdish Damodar Kande, Panch Witness as P.W. 2; Umeshchandra Balkrishna Sarangi, Commissioner, Co-operative Societies Pune as P.W. 3; and Satish Hiralal Ahir, Investigating Officer as P.W.4.

6. The trial court after considering the evidence held accused not guilty by observing that there were number of omissions and contradictions. I am in agreement with the conclusions arrived at by the trial court. The reasons are many but some of them I list below.

7. The complainant has stated in his complaint that the demands were first made on 06/05/1997 by accused in her office and the second demand was made by accused in the office of the Regional Deputy Registrar Co. operative Society (Milk) Pune, Common Wealth Building, Laxmi Road, Pune. P.W. 1, however, has not stated about this or the date on which the alleged demands were made in his evidence. Even if we give the benefit of doubt to P.W. 1 that he may not have remembered the dates exactly still he could have stated in the evidence that he had gone to Common Wealth Building where the second demand was allegedly made by accused. This is a very material omission.

As per the case of prosecution, complainant met accused four times, i.e., 02/05/1997, 06/05/1997, 15/05/1997 and lastly on 29/05/1997 when the trap was laid. According to complainant, the first demand was on 06/05/1997 which means before the demand was made accused met the complainant only once, i.e., on 02/05/1997. But there is no mention in the complaint that he met accused repeatedly because in the deposition P.W. 1 says accused asked him to come again and again and when P.W. 1 asked accused as to why they were required to come again and again when all documents had been filed, accused made demand of Rs.1,500/-. But if the first demand itself has been made on 06/05/1997 and before that P.W. 1 has met accused on 02/05/1997, I do not understand how P.W. 1 says that accused made him come again and again and on 06/05/1997 made the illegal demand.

8. As noted earlier, in the complaint there is no mention about accused calling P.W. 1 again and again to her office and then made the demand.

9. Another omission is P.W. 1 in his deposition states that when accused informed P.W. 1 that he has to pay illegal gratification of Rs.1,500/- P.W. 1 told accused that he will have to consult with other members of the society. P.W. 1 further states that after consulting with the members they decided to approach the Anti Corruption Bureau office. All these material facts of consulting other members and the decision taken by them to approach Anti Corruption Bureau office is not mentioned in the complaint. So there is material improvement in that respect in the evidence of P.W. 1. Even if P.W. 1 has consulted the other members of the society and the decision was taken to approach Anti Corruption Bureau office, why none of the other members have stepped forward to give evidence to corroborate what P.W. 1 has stated. They have not even accompanied P.W. 1 to lodge the complaint.

10. In the cross-examination P.W. 1 admits that he filled Form Exh.27 on 29/05/1997 after opening bank account on 15/05/1997. Admittedly, this form Exh.27 was given to P.W. 1 on 02/05/1997 and he submitted it on 29/05/1997. Even from the evidence of Investigating Officer P.W. 4 it appears that the complainant had with him form Exh.27 for

registration of society when he went to the office of Anti Corruption Bureau. This means that until 29/05/1997 P.W. 1 has not submitted the application form Exh.27 for registration of the society and for issuance of certificate. Therefore, the contention about demand of bribe for issuance of certificate even before filing and submitting the application form itself is questionable.

11. P.W. 1 in his cross-examination, however, states that application form Exh.27 was filed in the office of accused before filing the complaint in the Anti Corruption Bureau office. But as noted earlier, his evidence is falsified by the Investigating Officer who says that P.W. 1 had the form of registration of society with him when he lodged the complaint.

12. The amount was not found or recovered from the person of the accused but found in the carry bag kept on the floor by the right hand side of the chair of accused. Prosecution says the carry bag was on the right hand side of accused who lifted the bag with her left hand put the envelope inside with her right hand. That defies sense because, if the carry bag was on the right side of accused, accused will pick it up with right hand not left hand. This raises a doubt on the veracity of prosecution's case. As per prosecution, it was accused who kept the money in the carry bag and before keeping it in the carry bag, as per evidence of P.W. 1, accused took out envelope from her drawer and placed it before P.W. 1 who kept the amount in the envelope and pushed the currency notes into the envelope and kept

the envelope in the carry bag. But the panch witness does not say about accused pushing the currency notes into the envelope. Panch witness does not state that accused kept envelope in her drawer and when the complainant went to give signal, she picked up the envelope from the drawer and placed it in the carry bag. This is a major contradiction. If according to panch witness, accused placed the envelope in the carry bag after complainant went out, I ask myself, how does P.W.1 say that accused put the envelope in her carry bag.

13. The trial court has also mentioned about various other omissions and contradictions from paragraph no.25 onward with which I totally agree. It is also to be noted that even the carry bag in which the envelope was found was not seized. P.W. 1 says accused pushed currency notes inside the envelope but the post trap panchanama does not mention about that. In this case, the amount is not recovered from the person of accused but was found in a carry bag which was lying on the floor. Therefore, issue of acceptance or recovery of amount from possession of accused also cannot be said to have been proved beyond reasonable doubt.

14. 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:

1 (2008) 10 SCC 450

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";

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.

15. 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.

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.

16. 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

2 (2014) 5 SCC 730
3 1996 SCC (Cri) 972

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.

17. I have perused the impugned judgment, considered the evidence, also heard Ms. Malhotra, learned APP. 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.

18. 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.

19. 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.

20. Appeal dismissed.

21. 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 respondent and will factor in all promotions and increments that respondent 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.)