

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.951 OF 2008**

The State of Maharashtra
(Through Deputy Superintendent of
Police, Ratnagiri)

....Appellant/Complainant

V/s.

Vinaykumar Channayya Swami
Age about 57 yrs., Assistant Director of
Fisheries, Ratnagiri, (Lower Class-I),
Partawane, Ratnagiri, Resident of State
Bank Colony, Ratnagiri, Native Place,
R/o. A-26, Mahalaxmi Nagar, Vijapur
Road, Solapur

.....Respondent/accused

Mrs. Anamika Malhotra, APP for State – Appellant.
Mr. Rahul More for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 22nd JANUARY 2021**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 29th December 2007 passed by the Judge, Special Court, Ratnagiri, 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 I have perused the evidence and the impugned judgment with the assistance of Ms. Malhotra, learned APP and Mr. More for respondent. Though Ms. Malhotra was at pains to persuade the Court to interfere with the impugned judgment, having perused the evidence and the impugned judgment, in my view, there is nothing that requires interference.

3 It is trite that the prosecution has to prove demand and acceptance of bribe by the accused. It is also settled law that merely because tainted currency has been found does not mean the demand has been proved. It is mandatory for the prosecution to prove both demand and acceptance otherwise the case has to fail.

4 The Apex Court in ***M.K. Harshan V/s. State of Kerala***¹ has held that in cases of bribery, two aspects are important. Firstly, there must be a demand and secondly, there must be acceptance in the sense that the accused has obtained the illegal gratification. The Apex Court in ***State of Punjab V/s. Madam Mohan Lal Verma***², in paragraph 11 has held as under :

11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the Act 1988. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe.

Therefore, mere receipt of the amount by the accused is not sufficient to fasten guilt in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. In this case, the Trial Court is right in concluding that prosecution has miserably failed in proving the demand.

5 It is prosecution's case that on 20th January 2003 when complainant met accused at his office and requested accused to release the second installment of a loan, accused demanded a sum of Rs.500/- as bribe

1. 1996 (11) SCC 720
2. 2013 Cr. L.P (SC) 914

for issuing the release order. Complainant told accused that he will bring the money the next day and left the office and went straight to the office of the Anti Corruption Bureau and lodged a complaint. After the pre-raid formalities were completed, the raid was affected on 21st January 2003. Accused was allegedly caught with the tainted currency and post trap formalities were completed, investigation commenced, FIR was lodged and after obtaining sanction, chargesheet was filed and charges were framed.

6 To drive home the charge, prosecution has led evidence of five witnesses, viz., Complainant as PW-1; Shadow panch witness as PW-2; Senior Clerk in the Fisheries Department, where accused was Assistant Director of Fisheries, as PW-3; Investigating Officer as PW-4; and Sanctioning Authority as PW-5.

7 A fatal blow has been hit on the prosecution's case by the evidence of PW-3. PW-3 categorically states that complainant went to the office of accused only on 21st January 2003 and not on 20th January 2003. Prosecution has not got the witness declared hostile and has accepted the version of PW-3 that complainant visited the office of accused only on 21st January 2003 and not on 20th January 2003. Therefore, the first demand itself cannot be stated to be proved. Moreover, PW-3 in his evidence, has stated that the first part of the loan amount of 35% had already been given and the second part of 55% was to be paid in four installments, out of which one had already been paid. The loan was to the extent of 90% of the value of the boat. PW-3 then states that on 21st January 2003 complainant Mr. Huna

visited their office alongwith recommendation letter issued by Licensing Officer at Nate. Complainant showed his application alongwith the recommendation letter for release of the second installment of 55%. PW-3 then sent complainant to accused for getting necessary endorsement and accused gave the necessary endorsement and sent complainant back to PW-3. PW-3 then handed over the application that had the endorsement of accused to the Inward Clerk, who registered the application and gave it back to PW-3. PW-3 then scrutinized the application and other documents and thereafter, prepared an order releasing the loan amount of Rs.51,000/- in favour of complainant alongwith a note. The note and the other documents then were sent to accused through Peon Mr. Ghosale, who has not been examined. Accused then signed on the order of release of the installment and Mr. Ghosale brought the file back and handed it over to the dispatch clerk. Thereafter, PW-3 left the office for lunch but when he returned at 2.00 p.m., he saw a crowd and the ACB officers came to him, took him away and the concerned files towards accused. Therefore, even before the raid had happened on 21st January 2003 in the afternoon, it is PW-3's case that complainant had visited in the morning session and accused has signed all the sanction papers for release of the loan installment of Rs.51,000/-. The Inward Clerk Mr. Horate also has not been examined.

8 As against this, PW-2, the panch witness, says that when he went with complainant to the office of accused on 21st January 2003, complainant inquired with accused about an order upon which accused told him that the

order is ready on the table and complainant should give the amount and then he will issue the order. Thereafter, complainant took out the amount of bribe by his right hand and it was handed over to accused and accused accepted the amount and kept it in his pocket on the left side of his shirt. Thereafter, complainant went outside and PW-2 remained inside the cabin. But complainant (PW-1) states that upon demand being made by accused, he removed the tainted currency notes from his left shirt pocket and showed it to accused and upon seeing the money, accused signed on the order which was sent by PW-3 through the Peon and thereupon accepted the tainted currency notes. We have to note that PW-2, the panch witness, in his evidence has not stated that complainant (PW-1) showed the currency notes to accused and accused signed the order before collecting the bribe amount. This intervening event of signing the release order by accused on sighting the tainted currency notes is very material contradiction. But PW-3 states that theses orders were signed much before even the raid took place in the morning session itself when complainant had visited the office of accused.

9 Therefore, in my view, the entire case of prosecution is not believable. The Trial Court has pointed out many further contradictions and omissions and flaws in the prosecution's case, which for the sake of brevity, I am not reproducing. The same, however, has this Court's endorsement.

10 The Apex Court in *Ghurey Lal V/s. State of U.P.*³ 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";

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

3. (2008) 10 SCC 450

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***⁴ 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***⁵ 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

4. (2014) 5 SCC 730

5. 1996 SCC (cri) 972

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 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.

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.

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 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.

Gauri A.
Gaekwad

Digitally signed
by Gauri A.
Gaekwad
Date:
2021.01.25
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(K.R. SHRIRAM, J.)