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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved On: 19th October, 2023

Pronounced On: 09th January, 2024

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CRL.A. 217/2017 & CRL.M.A. 1346/2016

STATE (GNCT OF DELHI)

..... Appellant

Through: Ms. Priyanka Dalal, APP for the State.

versus

NETRAPAL SINGH & ORS

..... Respondents

Through: Mr. Arshdeep Singh Khurana and
Mr. Harsh. Srivastava, Advocates for
Respondents No. 1, 2 and 4.
Mr. Hirein Sharma, Mr. Saurabh Goel,
Mr. Ajay Rajbhar & Ms. Sonali Gupta,
Advocates for Respondents No. 5 to 9.

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CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present appeal under Section 378(1) of the Code of Criminal Procedure, 1973 ('CrPC') has been preferred by the State against judgment dated 12.08.2015 passed by the learned Special Judge (PC Act) - 05 (ACB), (Central), Tis Hazari Courts, Delhi in Corruption Case No. 20/2013 arising out of FIR No. 383/2007



registered at PS Dabri. *Vide* the impugned judgment dated 12.08.2015, the learned Special Judge has acquitted the respondents of charges under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988 ('PC Act') punishable under Section 13(2) of the said Act.

2. Briefly stated, the facts of the present case are as under:

- i. One Chetan Prakash Sharma filed a writ petition, i.e., W.P.(CRL) 1897/2005 before this Court stating that he had recorded videos of police personnel and other government officials taking bribe from bootleggers. *Vide* order dated 12.12.2005, a learned Division Bench of this Court directed the Commissioner of Police to conduct an enquiry. Accordingly, the Commissioner of Police conducted a vigilance enquiry and the present FIR was registered.
- ii. The complainant's statement was recorded on 07.05.2007, wherein he stated that he wanted to expose corruption in the Police Department. He stated that in August 2005, one Daya Shankar met him and informed him that he was a bootlegger and some police officials had been forcibly extracting money from him and forcing him to sell illicit liquor. He further told the complainant that whenever he stopped selling illicit liquor, police officials will name him in false cases. The said Daya Sharma sought the complainant's help and the complainant came up with a plan to video graph police personnel while receiving money. Accordingly, the complainant videographed about 10 police officials and deposited the video cassette before this Court. On 27.01.2006, the complainant joined the vigilance enquiry conducted by Sh. J.L. Sahni, ACP, Vigilance. The video cassette



prepared by him was played in his presence and he identified the police officials recorded in the said video.

- iii. On the basis of the statement given by the complainant Chetan Prakash Sharma, the present FIR was registered. The video cassette was sent to the Central Forensic Sciences Laboratory, Chandigarh for analysis and it was found that there was no intentional alteration or tampering with the said cassette.
- iv. Upon completion of investigation, sufficient material was found against 09 of the police officials recorded in the video and a chargesheet was filed *qua* them for offences under Sections 7/13(1)(d)/13(2) of the PC Act.
- v. After considering the evidence led by the State as well as the accused persons, the learned Special Judge, passed the impugned judgment acquitting the respondents.

3. Learned APP for the State submitted that the complainant Chetan Prakash Sharma (PW-4) started a sting operation himself and made an audio-visual recording of the respondents where they were seen receiving a bribe. It was submitted that the complainant witnessed the proceedings himself and identified the respondents before the learned Trial Court as the persons in the video. It was submitted that after Daya Shankar (PW-7) informed the complainant about the illegalities, the complainant (PW-4) witnessed the events which were recorded by himself and therefore, the evidence given by him cannot be dismissed as hearsay.

4. Learned APP for the State further submitted that during the pendency of the writ petition before this Court, the complainant Chetan Prakash Sharma was



threatened and intimidated by one Gyan Singh, who worked as a driver of the SHO of P.S. Dabri in order to make him withdraw the said writ petition.

5. Learned APP for the State further submitted that the chargesheet in the present case was filed on 21.08.2013 and the respondents were released on bail on 05.10.2013. It was submitted that the statement of Daya Shankar (PW-7), who was the key witness for the prosecution, was recorded on 02.03.2015 during which he turned hostile and was cross-examined on behalf of the State. It was submitted that the testimony of the said witness was recorded nearly 1.5 years after the filing of chargesheet and release of the respondents on bail and therefore, the possibility of him being influenced or pressurized cannot be ruled out. Further, it was submitted that the shop which was initially run by Jaswant Singh and later by Daya Shankar (PW-7) was never impounded despite them not having a valid license for sale of liquor. It was submitted that during the course of investigation, Jaswant Singh gave a statement stating that Daya Shankar (PW-7) worked under him only till September 2005 and thereafter he took over the business. Jaswant Singh also admitted to paying money to some people and running an illegal liquor shop.

6. Learned APP for the State further submitted that Dr. S.K. Jain (PW-11), who gave the report of the CFSL regarding the video cassette (Ex.PW-11/A) stated that the said cassette had not been tampered with and was free from any intentional addition or deletion. The said witness further stated that since the original recording device was not available, an opinion as to the originality of the cassette could not be given. With regard to the said statement, it was submitted that if the statements of Dr. S.K Jain (PW-11) and the complainant Chetan Prakash Sharma (PW-4) are read in conjunction, it can be inferred that the cassette in which the



complainant had filmed the recordings was original. Therefore, it was submitted that the video cassette is admissible as primary evidence and has been wrongly discarded by the learned Trial Court.

7. Learned counsel for the respondents submitted that formal charge dated 26.02.2014 was framed against the respondents under Section 7 of the PC Act for being public servants and demanding bribe of an unspecified amount as gratification from Daya Shankar for permitting him to carry on trade in illicit liquor. Further, charge was framed under Sections 13(1)(d)/13(2) of the PC Act against the respondents for being public servants and using corrupt and illegal means or abusing their position to obtain a pecuniary advantage.

8. It was submitted that it is settled law that proof of demand and acceptance of a bribe is a pre-requisite for offences under Sections 7 and 13(1)(d) of the PC Act. It was submitted that in the present case, the prosecution has failed to establish that the respondents made any demand for illegal gratification. Daya Shankar (PW-7), i.e., the person who allegedly paid the bribe, did not state that the respondents demanded any bribe from him. It was submitted that the prosecution has also failed to prove any acceptance of bribe by the respondents.

9. As far as the statement of the complainant Chetan Prakash Sharma (PW-4) as regards the demand and payment of bribe is concerned, it was submitted that the same is inadmissible for being hearsay evidence.

10. Attention of this Court was drawn to the statement of the complainant (PW-4) recorded before the learned Trial Court, wherein he categorically stated that the respondents never demanded or accepted bribe from him. The complainant also stated that he did not know the names of the respondents at the time he filed the



writ petition before this Court and that he only learnt their identities during the TIP proceedings. It was submitted that a perusal of the statement of the complainant further reflects that he had failed to establish that he had any personal knowledge of the fact that the payment of money by Daya Shankar (PW-7) to the respondents was on account of a demand of bribe.

11. Attention of this Court was further drawn to the testimony of Daya Shankar (PW-7) wherein he stated as under:

“From 2005-2008, I lived in T-100, Punjabi Basti, Delhi. In the year 2008, I lived in RZ-27, Rajapuri Road, Vishwas Park, Uttam Nagar, Delhi. I was, then, employed with one Jaswant, who was engaged in the business of selling Liquor. I was paid Rs.100/- on daily basis and one Sompal was another employee, who was paid Rs.50/- per day. On the instructions of Jaswant, I used to hand over some money to persons known to him. Those persons used to visit J.J.Colony, Sehyog Vihar, Delhi in civil dress and I used to hand over money to them. Jaswant was running some committees and members of the committee used to come & collect their money. I can not identify those persons, who had collected money from me, as a long time has lapsed.”

12. It was submitted that a perusal of the aforesaid testimony reflect that Daya Shankar (PW-7) acted at the instance of his employer Jaswant, who has not been examined as a witness. It was further submitted that in his cross-examination, the said witness stated in the video recording, he and one Sohan Pal are seen handing over cash to some persons. The said Sohan Pal has also not been examined as a witness. It was further submitted that Daya Shankar (PW-7) did not identify the accused persons as the persons who were seen receiving the alleged bribe in the video.



13. It was further submitted that it is correctly noted by the learned Special Judge that the video recording in question was not admissible as primary or secondary evidence. It was submitted that in terms of Section 62 of the Indian Evidence Act, the prosecution has failed to prove that the video recording is original. It was submitted that the said recording is not free from suspicion of being tampered with. The sequence at serial no. 10 of the video cassette jump from 19:27:23 hours to 19:28:02 hours and thereafter from 19:30 hours to 19:38 hours. It is submitted that the examination report dated 19.01.2009 was prepared by Dr. S.K. Jain of CFSL, Chandigarh (PW-11), who in his testimony recorded before the learned Trial Court stated that in the absence of the recording device, it was not possible to opine whether the video recording was original data.

14. Attention of this Court was drawn to the report of the CFSL (Ex. PW-11/A) wherein it is stated that there was some discontinuity in the recording and some blank frames were also present. The video recording was also found to contain a 05 second TV clip of ETC channel in between.

15. Learned counsel for the respondents further submitted that the prosecution has also failed to comply with the mandatory requirement of Section 65 of the Indian Evidence Act. It was submitted that in view of an absence of certificate under Section 65B of the said Act, the learned Special Judge has rightly observed that the video cassette would not be admissible as secondary evidence.

16. Lastly, learned counsel for the respondents submitted that in any event, tape recorded conversation can only be relied upon as corroborative evidence of a conversation deposed about by any of the parties to the said conversation. In view



of the absence of any material evidence of any such conversation actually taking place, the tape recorded conversation cannot be relied upon.

17. In support of the aforesaid contentions, learned counsel for the respondents placed reliance on the following judgments:

- i. Anvar P.V. v. P.K. Basheer & Ors., (2014) 10 SCC 473.
- ii. Harpal Singh @ Chhota v. State of Punjab, (2017) 1 SCC 734.
- iii. Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal & Ors, (2020) 7 SCC 1.
- iv. Kalyan Kumar Gogoi v. Ashutosh Agnihotri & Anr., (2011) 2 SCC 532.
- v. Anil Maheshwari & Ors. v. CBI, 2013 SCC OnLine Del 2175.
- vi. Pravin Kumar Paraskumar Gokhroo v. State of Gujarat, 2019 SCC OnLine Guj 4193.
- vii. Karuna Deka v. State of Assam, 2020 SCC OnLine Gau 4965.
- viii. Neeraj Dutta v. State (Govt. of NCT of Delhi), 2022 SCC OnLine SC 1724.
- ix. P. Satyanarayana Murthy v. State of Andra Pradesh, (2015) 10 SCC 152.
- x. B. Jayaraj v. State of Andra Pradesh, (2014) 13 SCC 55.
- xi. Krishan Chander v. State of Delhi, (2016) 3 SCC 108.
- xii. Ghurey Lal v. State of Uttar Pradesh, (2008) 10 SCC 450.
- xiii. Ram Singh & Ors. v. Col. Ram Singh, 1985 (Supp) SCC 611.
- xiv. Mahabir Prasad Verma v. Dr. Surinder Kaur, (1982) 2 SCC 258.

18. By way of rejoinder, learned APP for the State submitted that as far as the argument on behalf of the respondents regarding the certificate under Section 65B of the Indian Evidence Act is concerned, the same cannot be taken at this stage. It was submitted that objections with regard to said statutory requirement are not



available, if it is not taken at the material time. In support of the said contention, reliance was placed on **R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple & Anr., (2003) 8 SCC 752.**

19. Heard learned counsel for the parties and perused the record.

20. While acquitting the present respondents, the learned Special Judge observed and held as under:

“7.1.1 Formal witnesses, examined, can be categorised in categories. PW-3 & PW-12 to PW-17, PW-21 & PW-22 have merely identified the pictures of accused persons in video cassette Ex.P-1. The other category of witnesses, are (PW-8, PW-9, PW-10 & PW-20) who had granted sanction for prosecution against the accused persons. The third category of witnesses are witnesses (PW-2, PW-5 & PW-6) to seizure & safe custody of video cassette Ex.P-1.

7.1.2 Chetan Sharma (PW-4) & Dr. S.K.Jain (PW-11) can be said to be the only material witnesses, who have supported, the prosecution case. Testimony of Chetan Sharma is totally inadmissible, being hearsay evidence of Daya Shankar’s alleged version and also because he has merely narrated the contents video cassette, which in itself is inadmissible. The testimony of Dr. S.K.Jain (PW-11) or the report submitted by him is apparently incomplete as he has not given any opinion whether the contents in cassette Ex.P-1 were original recording. He has also not opined regarding the compatibility of HI-8 cassette with the recording device. His findings/ opinion expressed in the report that there is no addition, deletion & tempering with the video footage is also patently wrong. A perusal of the testimony of Chetan Sharma (PW-4) , as recorded on 18.04.2015 indicates that the sequence at Srl.No.-10 displays the starting time of recording as 19:22 Hours and concluding time as 19:42 Hours. It was observed by the court that the sequence had jumped time from 19:27:23 Hours to 19:28:02 Hours and 19:30 Hours to 19:38 Hours. Meaning thereby, either the recording was stopped in between the sequence, or, some portion has been deleted, after the recording had been done. The FSL report being silent as regards this sequence; in my opinion, the same is not a complete & correct



report. Similarly, the FSL report has not noticed and opined about a TV clip of ETC Channel, in between the alleged recordings of corrupt activity.

7.2 However, in the absence of proof of actual demand of bribe, it can be held that there is any incriminating material against the accused persons. Mere identification of their pictures in cassette Bx.P-1 can not be said to be incriminating as cassette Ex.P-1 itself is inadmissible in evidence. The video footage contained in Ex.P-1 has not been opined by FSL to be the original recording. It has been demonstrated by the Id. defence counsels that the video cassette contains clippings of ETC Channel in between the alleged incriminating clips, which demonstrates that the cassette is not original recording. It was copied on a pre-recorded cassette. It has also not been brought on record that the recording device had the provisions of making direct recording on the cassette or it first recorded on a memory stick and then transferred the contents to cassette. The recording device was admittedly not sent to FSL for analysis. Thus, there is no evidence that video recording contained in cassette Ex.P-1 is original recording and, thus. Primary Evidence admissible u/sec.-62 of the Indian Evidence Act. In the absence of certificate u/sec.-65/B of the Indian Evidence Act, the cassette Ex.P-1 is apparently inadmissible as Secondary Evidence, as well. View taken by the Hon'ble Supreme Court of India in Anvar vs. P.K. Basheer reported as Manu/SC/0834/2014's case is as under:-

8. I am, thus, of the considered opinion that no incriminating material has come up against the accused persons. Prosecution has, thus, failed to establish the charges framed. All the accused persons are entitled to acquittal from the charges u/sec.-7 of the PC Act, 13 (i) (d) of the PC Act and punishable u/sec.-13 (2) of the PC Act. Ordered accordingly.”

21. The primary grounds taken by the respondents herein, in opposition to the present appeal are:



- i. Proof of demand and acceptance of bribe is a *sine qua non* for conviction for offences under Sections 7 and 13(1)(d)(i) and (ii) of the PC Act and the same as not been established since the statement given by Chetan Prakash Sharma (PW-4) regarding demand and acceptance of bribe is at best, hearsay.
 - ii. Inadmissibility of the video recording as primary evidence since it is not original data and not free from suspicion of tampering.
 - iii. Inadmissibility of the video recording as secondary evidence since it was not supported with a certificate under Section 65B of the Indian Evidence Act.
 - iv. Tape recorded conversations are only corroborative evidence of an alleged conversation and the prosecution has not proved that the alleged conversations ever happened.
22. It is well settled that in an appeal against acquittal under Section 378 of the CrPC, the scope of the appellate Court is to the extent that the judgment of acquittal should not be ordinarily interfered with unless the findings in such judgment are shown to be arrived at by incorrect or perverse appreciation of material on record and the law. This settled position of law with respect to the scope of the appellate Court *qua* an appeal against the acquittal has been considered in a catena of judgments by the Hon'ble Supreme Court. In **Basheera Begam v. Mohd. Ibrahim, (2020) 11 SCC 174** the Hon'ble Supreme Court has held:

“190. At the cost of repetition, it is reiterated that the burden of proving an accused guilty beyond all reasonable doubt lies on the prosecution. If upon analysis of evidence two views are possible, one which points to the guilt of the accused and the other which is inconsistent with the guilt of the accused,



the latter must be preferred. Reversal of a judgment and order of conviction and acquittal of the accused should not ordinarily be interfered with unless such reversal/acquittal is vitiated by perversity. In other words, the court might reverse an order of acquittal if the court finds that no person properly instructed in law could have upon analysis of the evidence on record found the accused to be “not guilty”. When there is circumstantial evidence pointing to the guilt of the accused, it is necessary to prove a motive for the crime. However, motive need not be proved where there is direct evidence. In this case, there is no direct evidence of the crime.

191. In *Sadhu Saran Singh v. State of U.P.* [*Sadhu Saran Singh v. State of U.P.*, (2016) 4 SCC 357 : (2016) 2 SCC (Cri) 275] , this Court observed that an appeal against acquittal has always been on an altogether different pedestal from an appeal against conviction. In an appeal against acquittal, where the presumption of innocence in favour of the accused is reinforced, the appellate court would interfere with the order of acquittal only when there is perversity. In this case, it cannot be said that the reasons given by the High Court to reverse [*Mohd. Ibrahim v. State*, 2006 SCC OnLine Mad 1569] the conviction of the accused are flimsy, untenable or bordering on perverse appreciation of evidence.”

23. The Hon’ble Supreme Court in **Jafarudheen v. State of Kerala, (2022) 8 SCC 440**, made a detailed analysis of the precedents, with respect to the scope of an appeal against acquittal and recorded as under:

“Discussion

Scope of appeal filed against the acquittal

25. While dealing with an appeal against acquittal by invoking Section 378CrPC, the appellate court has to consider whether the trial court’s view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.



26. *Mohan v. State of Karnataka* [*Mohan v. State of Karnataka*, (2022) 12 SCC 619 : 2021 SCC OnLine SC 1233] as hereunder : (SCC paras 20-23)

“20. Section 378CrPC enables the State to prefer an appeal against an order of acquittal. Section 384CrPC speaks of the powers that can be exercised by the appellate court. When the trial court renders its decision by acquitting the accused, presumption of innocence gathers strength before the appellate court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. Certainly, the Court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person while they depose. The appellate court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it, but is duty-bound to satisfy itself whether the decision of the trial court is both possible and plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. Article 21 of the Constitution of India also aids the accused after acquittal in a certain way, though not absolute. Suffice it is to state that the appellate court shall remind itself of the role required to play, while dealing with a case of an acquittal.

21. Every case has its own journey towards the truth and it is the Court’s role to undertake. Truth has to be found on the basis of evidence available before it. There is no room for subjectivity nor the nature of offence affects its performance. We have a hierarchy of courts in dealing with cases. An appellate court shall not expect the trial court to act in a particular way depending upon the sensitivity of the case. Rather it should be appreciated if a trial court decides a case on its own merit despite its sensitivity.

22. At times, courts do have their constraints. We find, different decisions being made by different courts, namely, the trial court on the one hand and the appellate courts on the other. If such decisions are made due to institutional constraints, they do not augur well. The district judiciary is expected to be the foundational court, and therefore, should have the freedom of mind to decide a case on its own merit or else it might become a stereotyped one rendering conviction on a moral platform. Indictment and condemnation over a decision rendered, on considering all the materials placed before it, should be avoided. The



appellate court is expected to maintain a degree of caution before making any remark.

23. This Court, time and again has laid down the law on the scope of inquiry by an appellate court while dealing with an appeal against acquittal under Section 378CrPC. We do not wish to multiply the aforesaid principle except placing reliance on a recent decision of this Court in *Anwar Ali v. State of H.P.* [*Anwar Ali v. State of H.P.*, (2020) 10 SCC 166 : (2021) 1 SCC (Cri) 395] : (SCC pp. 182-85, para 14)

‘14.2. When can the findings of fact recorded by a court be held to be perverse has been dealt with and considered in para 20 of the aforesaid decision, which reads as under : (*Babu case* [*Babu v. State of Kerala*, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] , SCC p. 199)

“20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is “against the weight of evidence”, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide *Rajinder Kumar Kindra v. Delhi Admn.* [*Rajinder Kumar Kindra v. Delhi Admn.*, (1984) 4 SCC 635 : 1985 SCC (L&S) 131] , *Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons* [*Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons*, 1992 Supp (2) SCC 312] , *Triveni Rubber & Plastics v. CCE* [*Triveni Rubber & Plastics v. CCE*, 1994 Supp (3) SCC 665] , *Gaya Din v. Hanuman Prasad* [*Gaya Din v. Hanuman Prasad*, (2001) 1 SCC 501] , *Arulvelu* [*Arulvelu v. State*, (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288] and *Gamini Bala Koteswara Rao v. State of A.P.* [*Gamini Bala Koteswara Rao v. State of A.P.*, (2009) 10 SCC 636 : (2010) 1 SCC (Cri) 372])”

It is further observed, after following the decision of this Court in *Kuldeep Singh v. Commr. of Police* [*Kuldeep Singh v. Commr. of Police*, (1999) 2 SCC 10 : 1999 SCC (L&S) 429] , that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.



14.3. In the recent decision of *Vijay Mohan Singh* [*Vijay Mohan Singh v. State of Karnataka*, (2019) 5 SCC 436 : (2019) 2 SCC (Cri) 586] , this Court again had an occasion to consider the scope of Section 378CrPC and the interference by the High Court [*State of Karnataka v. Vijay Mohan Singh*, 2013 SCC OnLine Kar 10732] in an appeal against acquittal. This Court considered a catena of decisions of this Court right from 1952 onwards. In para 31, it is observed and held as under : (*Vijay Mohan Singh case* [*Vijay Mohan Singh v. State of Karnataka*, (2019) 5 SCC 436 : (2019) 2 SCC (Cri) 586] , SCC pp. 447-49)

“31. An identical question came to be considered before this Court in *Umedbhai Jadavbhai* [*Umedbhai Jadavbhai v. State of Gujarat*, (1978) 1 SCC 228 : 1978 SCC (Cri) 108] . In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on reappreciation of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under : (SCC p. 233)

‘10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case.’

31.1. In *Sambasivan* [*Sambasivan v. State of Kerala*, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320] , the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on reappreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the learned trial court was perverse and



suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court. While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under : (SCC p. 416)

‘8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in *Doshi case* [*Ramesh Babulal Doshi v. State of Gujarat*, (1996) 9 SCC 225 : 1996 SCC (Cri) 972] viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well-considered judgment duly meeting all the contentions *raised* before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court’s judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case.’

31.2. In *K. Ramakrishnan Unnithan* [*K. Ramakrishnan Unnithan v. State of Kerala*, (1999) 3 SCC 309 : 1999 SCC (Cri) 410] , after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach



of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to reappraise the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.

31.3. In *Atley* [*Atley v. State of U.P.*, AIR 1955 SC 807] , in para 5, this Court observed and held as under : (AIR pp. 809-10)

‘5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417CrPC came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence has been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.



If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, *Surajpal Singh v. State* [*Surajpal Singh v. State*, 1951 SCC 1207 : AIR 1952 SC 52] ; *Wilayat Khan v. State of U.P.* [*Wilayat Khan v. State of U.P.*, 1951 SCC 898 : AIR 1953 SC 122]) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.’

31.4. In *K. Gopal Reddy* [*Gopal Reddy v. State of A.P.*, (1979) 1 SCC 355 : 1979 SCC (Cri) 305] , this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule.”““

(emphasis in original)

27.N. *Vijayakumar v. State of T.N.* [*N. Vijayakumar v. State of T.N.*, (2021) 3 SCC 687 : (2021) 2 SCC (Cri) 515] as hereunder : (SCC pp. 695-99, paras 20-21 & 23-24)

“20. Mainly it is contended by Shri Nagamuthu, learned Senior Counsel appearing for the appellant that the view taken by the trial court is a “possible view”, having regard to the evidence on record. It is submitted that the trial court has recorded cogent and valid reasons in support of its findings for acquittal. Under Section 378CrPC, no differentiation is made between an appeal against acquittal and the appeal against conviction. By considering the long line of earlier cases this Court in the judgment in *Chandrappa v. State of Karnataka* [*Chandrappa v. State of Karnataka*, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] has laid down the general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal. Para 42 of the judgment which is relevant reads as under : (SCC p. 432)

‘42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:



(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him 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*, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.’

21. Further in the judgment in *Murugesan* [*Murugesan v. State*, (2012) 10 SCC 383 : (2013) 1 SCC (Cri) 69] relied on by the learned Senior Counsel for the appellant, this Court has considered the powers of the High Court in an appeal against acquittal recorded by the trial court. In the said judgment, it is categorically held by this Court that only in cases where conclusion recorded by the trial court is not a possible view, then only the High Court can interfere and reverse the acquittal to that of conviction. In the said judgment, distinction from that of “possible view” to “erroneous view” or “wrong view” is explained. In clear terms, this Court has held that if the view taken by the trial court is a “possible view”, the High Court ought not to reverse the acquittal to that of the conviction.



23. Further, in *Hakeem Khan v. State of M.P.* [*Hakeem Khan v. State of M.P.*, (2017) 5 SCC 719 : (2017) 2 SCC (Cri) 653] this Court has considered the powers of the appellate court for interference in cases where acquittal is recorded by the trial court. In the said judgment it is held that if the “possible view” of the trial court is not agreeable for the High Court, even then such “possible view” recorded by the trial court cannot be interdicted. It is further held that so long as the view of the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of the trial court cannot be interdicted and the High Court cannot supplant over the view of the trial court. Para 9 of the judgment reads as under : (SCC pp. 722-23)

‘9 [Ed. : Para 9 corrected vide Official Corrigendum No. F.3/Ed.B.J./29/2017 dated 13-7-2017.] . Having heard the learned counsel for the parties, we are of the view that the trial court’s judgment is more than just a possible view for arriving at the conclusion of acquittal, and that it would not be safe to convict seventeen persons accused of the crime of murder i.e. under Section 302 read with Section 149 of the Penal Code. The most important reason of the trial court, as has been stated above, was that, given the time of 6.30 p.m. to 7.00 p.m. of a winter evening, it would be dark, and, therefore, identification of seventeen persons would be extremely difficult. This reason, coupled with the fact that the only independent witness turned hostile, and two other eyewitnesses who were independent were not examined, would certainly create a large hole in the prosecution story. Apart from this, the very fact that there were injuries on three of the accused party, two of them being deep injuries in the skull, would lead to the conclusion that nothing was premeditated and there was, in all probability, a scuffle that led to injuries on both sides. While the learned counsel for the respondent may be right in stating that the trial court went overboard in stating that the complainant party was the aggressor, but the trial court’s ultimate conclusion leading to an acquittal is certainly a possible view on the facts of this case. This is coupled with the fact that the presence of the kingpin Sarpanch is itself doubtful in view of the fact that he attended the Court at some distance and arrived by bus after the incident took place.’

24. By applying the abovesaid principles and the evidence on record in the case on hand, we are of the considered view that having regard to



material contradictions which we have already noticed above and also as referred to in the trial court judgment, it can be said that acquittal is a “possible view”. By applying the ratio as laid down by this Court in the judgments which are stated supra, even assuming another view is possible, same is no ground to interfere with the judgment of acquittal and to convict the appellant for the offence alleged. From the evidence, it is clear that when the Inspecting Officer and other witnesses who are examined on behalf of the prosecution, went to the office of the appellant-accused, the appellant was not there in the office and office was open and people were moving out and in from the office of the appellant. It is also clear from the evidence of PWs 3, 5 and 11 that the currency and cellphone were taken out from the drawer of the table by the appellant at their instance. There is also no reason, when the tainted notes and the cellphone were given to the appellant at 5.45 p.m. no recordings were made and the appellant was not tested by PW 11 till 7.00 p.m.”

24. In view of the above legal principles, the appellant/State had to demonstrate that the impugned judgment suffered from any illegality or perversity. Whether the view taken by the learned trial Court was a possible one or not has to be determined on the basis of evidence on record, including the testimonies of the witnesses and documents.

25. In the present case, the respondents were tried for charges under Sections 7, 13(1)(d) punishable under Section 13(2) of the PC Act. A constitution bench of the Hon’ble Supreme Court, in **Neeraj Dutta v. State (Government of NCT of Delhi)**, (2023) 4 SCC 731, dealt with the following issue:

“3. Thus, the moot question that arises for answering the reference is, in the absence of the complainant letting in direct evidence of demand owing to the non-availability of the complainant or owing to his death or other reason, whether the demand for illegal gratification could be established by other evidence. This is because in the absence of proof of demand, a legal presumption under Section 20 of the Prevention of Corruption Act, 1988 (for short “the Act”) would not arise. Thus, the proof of demand is a *sine qua non* for an offence to be



established under Sections 7, 13(1)(d)(i) and (ii) of the Act and de hors the proof of demand the offence under the two sections cannot be brought home. Thus, mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof in the absence of proof of demand would not be sufficient to bring home the charge under Sections 7, 13(1)(d)(i) and (ii) of the Act. Hence, the pertinent question is, as to how demand could be proved in the absence of any direct evidence being let in by the complainant owing to the complainant not supporting the complaint or turning “hostile” or the complainant not being available on account of his death or for any other reason. In this regard, it is necessary to discuss the relevant Sections of the Evidence Act before answering the question for reference.”

Answering the aforesaid issue, the Constitution Bench held as under:

“88. What emerges from the aforesaid discussion is summarised as under:

88.1. (a) Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a *sine qua non* in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.

88.2. (b) In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.

88.3. (c) Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.

88.4. (d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:

(i) if there is an *offer to pay by the bribe-giver* without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a *case of acceptance* as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.

(ii) **On the other hand, if the public servant makes a demand and the bribe-giver accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is a *case of obtainment*. In**



the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Sections 13(1)(d)(i) and (ii) of the Act.

(iii) In both cases of (i) and (ii) above, the offer by the bribe-giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Sections 13(1)(d)(i) and (ii), respectively of the Act. Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offer which emanates from the bribe-giver which is accepted by the public servant which would make it an offence. Similarly, a prior demand by the public servant when accepted by the bribe-giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Sections 13(1)(d)(i) and (ii) of the Act.

88.5. (e) The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof. On the basis of the material on record, the court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

88.6. (f) In the event the complainant turns “hostile”, or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

88.7. (g) Insofar as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section. The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Sections 13(1)(d)(i) and (ii) of the Act.



88.8. (h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in sub-para 88.5(e), above, as the former is a mandatory presumption while the latter is discretionary in nature.”

(emphasis supplied)

26. In view of the above settled legal position, the prosecution can succeed only when it establishes both demand and acceptance of a bribe which are a *sine qua non* for establishing commission of an offence under Sections 13(1)(d) and 13(1)(2) of the PC Act. In case the complainant turns hostile, it will be permissible for prosecution to prove demand by way of other evidence either documentary or oral or circumstantial in nature. In the present case PW-7 has turned hostile and therefore, the proof of demand was sought to be established by way of evidence of Chetan Prakash Sharma (PW-4). It is pertinent to note that the present case is not one in which a trap was laid by a law enforcement agency following legal procedure in terms of pre-trap proceedings, independent witnesses, shadow witnesses, handwash etc. The evidence of Chetan Prakash Sharma (PW-4), as correctly noted by the learned Special Judge, is in the nature of hearsay evidence, as is borne out from the records of the case.

27. The other piece of evidence strongly relied upon by the prosecution is the video cassette recording (Ex. P-1), which had been allegedly made by Chetan Prakash Sharma (PW-4) showing that the respondents received alleged bribe from Daya Shankar (PW-7). The said video cassette (Ex. P-1) was sent for analysis and Dr. SK Jain (PW-11) gave his report (Ex. PW-11/A) stating that the said recording was found free from addition, deletion or tampering.



28. In the aforesaid context, the observation made by the learned Special Judge with regard to admissibility of the said video cassette (Ex. P-1) needs to be examined. The learned Special Judge, in his finding, has examined that the testimony of Chetan Prakash Sharma (PW-4) as recorded on 18.04.2015 and made the following observations:

“7.1.2...A perusal of the testimony of Chetan Sharma (PW-4), as recorded on 18.04.2015 indicates that the sequence at Sri. No.-IO displays the starting time of recording as 19:22 Hours and concluding time as 19:42 Hours. It was observed by the court that the sequence had jumped time from 19:27:23 Hours to 19:28:02 Hours and 19:30 Hours to 19:38 Hours. Meaning thereby, either the recording was stopped in between the sequence, or, some portion has been deleted, after the recording had been done. The FSL report being silent as regards this sequence; in my opinion, the same is not a complete & correct report. Similarly, the FSL report has not noticed and opined about a TV clip of ETC Channel, in between the alleged recordings of corrupt activity.”

Similarly, in Para 7.2, it has been observed as under:

“7.2 However, in the absence of proof of actual demand of bribe, it can be held that there is any incriminating material against the accused persons. Mere identification of their pictures in cassette Bx.P-1 can not be said to be incriminating as cassette Ex.P-1 itself is \ inadmissible in evidence. The video footage contained in Bx.P-1 has not been opined by FSL to be the original recording. It has been demonstrated by the Id. defence counsels that the video cassette contains clippings of ETC Channel in between the alleged incriminating clips, which demonstrates that the cassette is not original recording. It was copied on a pre-recorded cassette. **It has also not been brought on record that the recording device had the provisions of making direct recording on the cassette or it first recorded on a memory stick and then transferred the contents to cassette. The recording device was admittedly not sent to FSL for analysis. Thus, there is no evidence that video recording contained in cassette Bx.P-1 is original recording and, thus. Primary Evidence admissible u/sec.-62 of the Indian Evidence Act. In the absence of certificate u/sec.-65/B of the Indian Evidence Act, the cassette Ex.P-1 is apparently inadmissible as Secondary Evidence, as well.** View taken by the Hon’ble Supreme Court of



India in Anvar P.V. Vs. P.K. Basheer reported as Manu/SC/0834/2014's case is as under:-

“Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document i.e. electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B(2). Following are the specified conditions under sec.-65-B(2) of the Indian Evidence Act:-

- (i) The electronic record containing the information should have been produced by the computer, during the period over, which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;
- (ii) The information of the kind contained in electronic record or of the kind from, which the information is derived was regularly fed into the computer in the ordinary course of the said activity;
- (iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and
- (iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

U/sec.-65 (4) of the Indian Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:



- (a) There must be a certificate, which identifies the electronic record containing the statement;
 - (b) The certificate must describe the manner in which the electronic record was produced;
 - (c) The certificate must furnish the particulars of the device involved in the production of that record;
 - (d) The certificate must deal with the applicable conditions mentioned u/sec.-65 B(2) of the Indian Evidence Act; and
 - (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.”
- (emphasis supplied)

The aforesaid analysis of the learned Special Judge, that the contents of the video cassette, as played during the course of evidence, were on some other pre-recorded data and there were chances that the recording was stopped in between or some portions were deleted, is a possible view. It is also pertinent to note that Dr. SK Jain (PW-11), in his testimony, also submitted that whether the recording in the said cassette was original could not be determined as the recording device was not sent to FSL despite request for the same. Furthermore, in the cross-examination of Chetan Prakash Sharma (PW-4), he asserted that he used a new blank cassette between 14.10.2005 to 22.10.2005. However, the same is contradictory as the cassette (Ex. P-1) which was played during the course of evidence contained clippings of ETC channel. Finally, the fact that the said cassette (Ex. P-1) was not supported by a certificate under Section 65B of the Indian Evidence Act, the same could not be admitted as secondary evidence, as it had come on record that there was no evidence that the recording contained in the cassette (Ex. P-1) was the original recording.



29. The contention of learned APP for the State with respect to the fact that the objection with regard to the admissibility of the video cassette was not taken at the first opportunity is not sustainable as perusal of the examination-in-chief of Chetan Prakash Sharma (PW-4) shows that the defence had objected to the mode of proof at the time when the video cassette was sought to be played.

30. In view of the aforesaid discussion this Court is of the opinion that the prosecution in order to succeed in the present appeal could not demonstrate the judgment of the learned Trial Court suffered from any perversity or illegality. Upon analysis of the material on record, this Court is of the opinion that the learned Special Judge has examined, analysed and appreciated all the material on record placed by the prosecution. Hence, this Court finds no ground to interfere with the impugned judgment.

31. The appeal is accordingly dismissed and disposed of.

32. Pending applications, if any, also stand disposed of.

33. Bail bonds furnished by the respondents stand discharged.

34. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
JUDGE

JANUARY 09, 2024/sn