



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 56 OF 2006

The State of Maharashtra,
Through
Anti Corruption Bureau, Latur.

... Appellant

Versus

1. Prashant s/o Ramkrishna Yenge,
Age: 33 years, Occu. Service,
Junior Engineer, M.S.E.B.,
Branch No.1, Renapur,
R/o Shahu Chowk, Yenge Niwas,
Latur.

2. Gopal s/o Balaji Jadhav,
Age: 30 years, Occu. Hotel Business,
R/o Renapur, District Latur.

... Respondents

[Orig. Accused nos. 1 and 2]

.....

Mr. S. S. Dande, APP for the Appellant-State.
Mr. V. P. Golewar, Advocate for Respondent Nos. 1 and 2.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 10.06.2025

Pronounced on : 13.06.2025

JUDGMENT :

1. State hereby takes exception to the judgment and order of acquittal dated 12.09.2005 passed in Special Case No. 7 of 2002 by which present respondents came to be acquitted from charge under Section 7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 (for short, 'PC Act') and under Section 12 of PC Act respectively.

CASE OF PROSECUTION

2. Sum and substance of the prosecution story in trial court is that, wife of complainant PW1 was running a flour mill. During visit of personnel of M.S.E.B. i.e. Linemen on 17.10.2001, it was noticed by them that, flour mill was being run by committing theft of electricity. Consequently, they disconnected supply. To restore the same, it is the case of prosecution that, accused no.1 Prashant Ramkrishna Yenge demanded bribe for reconnection. Said demand was conveyed through lineman Mundhe. PW1, as was not willing to pay illegal gratification, approached ACB authorities and lodged report, on the strength of which PW4 ACP Shepal noted the complaint. Thereafter, he summoned panchas, explained the procedure of trap, conducted pre-trap verification, gave necessary instructions, gave demonstration of application of anthracene powder to the currency which were to be paid on demand. PW1 complainant and PW2 pancha were made to visit accused and were instructed to handover tainted currency on demand.

3. On 24.10.2002 PW1 and PW2 approached office of M.S.E.B. Accused no.1 raised demand and directed PW1 to hand over bribe amount to accused no.2, who accepted it on behalf of accused no.1. Necessary signal was relayed and raiding party apprehended accused.

After lodging report and completing investigation, both accused were tried before Special Judge vide Special Case No. 7 of 2002.

4. Trial was conducted, wherein prosecution adduced evidence of in all 4 witnesses and relied on documentary evidence. On appreciating the same and after hearing each of the sides, learned trial Judge reached to a conclusion that prosecution failed to prove the charges against accused no.1 beyond reasonable doubt and also failed to prove that accused no.2 abetted accused no.1 to commit the offence. Resultantly, by judgment dated 12.09.2005, learned Special Judge acquitted both the accused.

Hence instant appeal.

SUBMISSIONS

On behalf of the Appellant-State :

5. Learned APP, after appraising this Court about the factual background of the prosecution case, would submit that there was cogent, reliable and trustworthy evidence about demand and acceptance. Thus, according to him, *sine qua non* for attracting the charges were very much available in the prosecution evidence. He submitted that, investigating machinery had scrupulously planned

trap after receiving complaint from PW1. Both, PW1 and PW2, were given necessary instructions. Pre-trap panchanama was duly drawn. He pointed out that, unfortunately, complainant did not support prosecution while in witness box, however, testimony of independent witness PW2 was convincing and sufficient to hold case of prosecution as proved. That, this witness has stuck up to the prosecution version both, in examination-in-chief as well as cross examination, and therefore there was no difficulty to accept his version. Learned APP would submit that, after demand was raised by accused no.1, he had further directed handing over bribe amount to accused no.2, who accepted it on behalf of accused no.1 and he was apprehended while he was in possession of bribe amount. Therefore, it is his submission that, prosecution has discharged its burden of proving the charges. According to learned APP, this aspect has not been considered by learned trial court. Learned APP further pointed out that, evidence of Investigating Officer has also not been correctly appreciated and hence, learned APP questions the maintainability of the impugned judgment and urges to allow the appeal.

On behalf of the Respondent :

6. Per contra, attacking the case of prosecution, learned counsel for respondent would submit that, prosecution miserably failed to

establish the charges. There was no convincing evidence about theft of electricity as well as about demand of illegal gratification or its receipt. He pointed out that, there is no nexus between accused no.1 and accused no.2, and therefore there is no question of accused no.2 accepting amount at the instance or at the behest of accused no.1. Crucial witnesses, who allegedly visited flour mill run by complainant's wife, namely, Motipalle and Mundhe, who allegedly raised demand on behalf of accused no.1, are surprisingly not examined by prosecution to establish demand of illegal gratification. He pointed out that, admittedly, accused no.1 has not accepted any amount. He pointed out that, here, complainant himself has not supported prosecution and therefore case of prosecution had collapsed at that point of time itself. He also questioned the veracity of evidence of PW2 by taking this Court through the answers given by him in cross, and would submit that his version is inconsistent with the prosecution version and there are several material contradictions. Resultantly, learned counsel for respondent supports acquittal of both accused and urges to dismiss the appeal for want of merits.

LEGAL PRECEDENTS :

7. This Court is mindful of the judicial precedents while dealing with appeal against acquittal. The settled legal position which is

reflected in series of judgments and the principles culled out thereupon are referred hereto as below :

Since the celebrated case in the case of ***Sheo Swarup V King Emperor***, AIR 1934 PC 227 (2), law is clearly settled as under:

“15.

(1) *An appellate court has full power to review 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 emphasize 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 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.*

16. *In Ghurey Lal v. State of U.P. (2008) 10 SCC 450, this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the Accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.*

17. *In State of Rajasthan v. Naresh (2009) 9 SCC 368, the Court again examined the earlier judgments of this Court and laid down that: (SCC p. 374, para 20) :*

20. ... an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the Accused.

18. *In State of U.P. v. Banne (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include: (SCC p. 286, para 28):*

- (i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;*
- (ii) The High Court's conclusions are contrary to evidence and documents on record;*
- (iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;*
- (iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;*
- (v) This Court must always give proper weight and consideration to the findings of the High Court;*

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the Accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

(emphasis supplied)

8. Finally, guidelines meant for Appellate Court can be summarized as under :

"(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court,

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal,

(iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its

powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are 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, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) 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. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

9. The other water shedding judgments on the aspect can be named as; (1) ***Surajpal Singh v. State*** [AIR 1952 SC 52], (2) ***Tulsiram Kanu v. State*** [AIR 1954 SC 1], (3) ***Madan Mohan Singh v. State of U.P.*** [AIR 1954 SC 637], (4) ***Atley v. State of U.P.*** [AIR 1955 SC 807], (5) ***Aher Raja Khima v. State of Saurashtra*** [AIR 1956 SC 217], (6) ***Chandrappa V. State of Karnataka*** (2007) 4 SCC 415.

ANALYSIS

10. After considering the submissions of both sides, this Court undertook the exercise of re-appreciation and re-analysis of the evidence adduced in trial court. Going by the charge, oral evidence of PW1 complainant and PW2 pancha assumes significance and is accordingly visited, which is at Exhibits 69 and 72 respectively. As pointed out by learned counsel for respondent, and it also not being disputed by learned APP, PW1 Maroti, who had lodged report, has not supported prosecution, and with permission of Court, learned APP seems to have cross-examined its own witness. Law is fairly settled that entire evidence of hostile witness need not be discarded, rather that much part of the evidence which is of use to the prosecution can be gone into and taken aid of. However, here, it is noticed that, at the inception stage itself, this witness has denied complaint lodged by him to be read over to him after it being narrated and noted. In para 3 of his evidence, he stated that he himself called accused no.1 to have tea and thereafter, ACB authorities asked him to proceed to give amount to accused no.2. Therefore, no part of his evidence can be taken recourse to and rather it needs to be discarded in its entirety.

11. As regards to PW2 Uttam Laad is concerned, he, in his evidence at Exhibit 72, narrated about being called to ACB office, being introduced to complainant as well as complaint, PW4 ACP Shepal explaining procedure and he accompanying PW1 to approach accused and to give tainted currency on demand and relay signal. He stated that, that day he and PW1 went to sub-station but office was locked and therefore PW1 made telephone call and inquired whether accused no.1 was present or not. He also deposed that the person answering from the other side confirmed availability of accused no.1 and thereafter they all came to Latur road and he and PW1 visited the office of accused no.1 who asked them to come to the tea stall and that he would join them there. After five minutes, accused no.1 came on motorcycle. At tea stall, PW1 placed order of tea. However, this witness deposed that PW1 himself, i.e. before demand itself, informed accused no.1 that he has brought amount and whether he should hand it over. Therefore, as pointed out by learned counsel for respondent, crucial aspect of demand itself is missing. This witness further stated that, tea stall owner had come there and accused no.1 directed PW1 to give amount to tea stall owner. Though PW2 stated name of the tea stall owner as Jadhav, he was unable to identify accused no.2. Therefore, his evidence also gives serious blow to the prosecution version.

12. It is apparent thus that, firstly, there is no demand by accused no.1, and secondly, accused no.1 has not accepted the money in his hand. Though accused no.2 was found in possession of tainted currency and though PW2 speaks of PW1 handing over tainted currency to accused no.2 at the instance of accused no.1, the link between accused no.1 and accused no.2 is not demonstrated. Accused no.2 is apparently a tea stall owner and there is nothing to show that he had knowledge that the amount received by him was towards illegal gratification. For the more reason, even if currency is found in possession of accused no.2, there is no evidence that accused no.2 abetted accused no.1 and acted on his behalf and accepted the bribe amount. Even cross of PW2 shows that there is material omission about PW1 giving amount to accused no.2 at the instance of accused no.1.

13. Further, as submitted by learned counsel for respondent, it was expected of prosecution to examine the linemen namely Motipalle and Muhdhe, who had visited the very premises owned by complainant's wife. However, surprisingly these two witnesses, who allegedly noticed theft of electricity, carried out disconnection and further resulting into demand of bribe for reconnection, in spite of being available and their names figuring in the list of witnesses, are

not examined by the prosecution for the best reasons known to them. Similarly, other two police personnel, who were also said to be present at the tea stall when actual alleged demand and handing over of bribe amount took place, are also not examined by prosecution to fortify their case. Therefore, here also, prosecution version suffers serious dent.

CONCLUSION

14. Applying the above legal position, and on complete re-analysis and re-evaluation of the evidence, as well as on going through the impugned judgment, this court is more than convinced about prosecution failing to prove the charges beyond reasonable doubt. Learned trial Judge has considered each and every aspect of the prosecution case, tested the same in the backdrop of legal requirements and the findings reached are also supported by assigning sound reasons. Hence, there is no occasion or reason to disturb the findings. No case being made out on merits, the following order is passed :

ORDER

Appeal is dismissed.

[ABHAY S. WAGHWASE, J.]