THE HIGH COURT OF ORISSA AT CUTTACK

CRLLP No.34 of 2012
CNR No. ODHC010010372012
(In the matter of an application under Section 378 of the Criminal Procedure Code, 1973)

State of Orissa ……. ***Petitioner***

-Versus-

Hare Krushna Pandit ……. ***Opposite Party***

For the Petitioner : Mr. Sangram Das, SC (Vigilance)

For the Opposite Party : None

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 17.09.2026 : Date of Judgment: 31.10.2026

S.S. Mishra, J. The present appeal is directed against the judgment of acquittal dated 01.02.2011 passed by the learned Special Judge (Vigilance), Berhampur, Ganjam in T.R. No.77 of 2000 arising out of G.R. Case No.14 of 2000, whereby the respondent-accused was

acquitted of the charges under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

2. Heard Mr. Sangram Das, learned Standing Counsel (Vigilance) for the petitioner.

3. The prosecution case, in brief, is that P.W.1 Susila Kumar Panigrahi had retired as a Junior Engineer from Gudari P.W.D. Section on 30.06.1996. Although he was receiving pension after retirement, his gratuity had not been finalized because the No Due Certificate (N.D.C.) from Parlakhemundi P.W.D. Division had not been issued despite repeated reminders from the office of the Chief Engineer. According to the prosecution, the respondent, who was functioning as Cashier in the said Division, intentionally delayed processing of the N.D.C. for several months.

It is alleged that while P.W.1 repeatedly approached the respondent for issuance of the N.D.C., the respondent demanded illegal gratification of Rs.1,000/- for forwarding the certificate. Thereafter, on 02.02.2000, the amount was allegedly negotiated to Rs.500/- with an

assurance that the N.D.C. would be issued only upon payment of the said amount.

4. Unable to meet the illegal demand, P.W.1 approached the Superintendent of Police, Vigilance, Berhampur on 04.02.2000 and lodged the First Information Report. Acting upon the complaint, Berhampur Vigilance P.S. Case No.5 dated 05.02.2000 was registered and a trap was organized. Two independent Government officials were requisitioned as witnesses, phenolphthalein powder was applied to the notes, chemical demonstration was conducted before the witnesses, and instructions were issued that the money should be handed over only upon demand by the respondent.

5. The trap party thereafter proceeded to the office of the respondent. According to the prosecution, after reiteration of the demand, P.W.1 handed over the tainted money to the respondent, who accepted the same. Immediately thereafter, the vigilance officials entered the office, recovered the tainted currency notes from the possession of the respondent, and conducted hand-wash tests which allegedly yielded positive chemical reaction. The tainted money, sample bottles and other

relevant articles were seized, and after completion of investigation and obtaining sanction for prosecution, charge-sheet was submitted against the respondent.

6. During trial, the prosecution examined seven prosecution witnesses and one defence witness. The defence denied the allegations in their entirety.

7. Upon appreciation of evidence, the learned trial Court found that although recovery of the tainted currency notes and positive hand-wash test stood proved, the prosecution failed to establish the essential ingredients of demand and voluntary acceptance of illegal gratification. The trial Court noticed that the respondent was merely a clerk-cum-cashier having no authority to issue the N.D.C., that no pending N.D.C. file had been seized from his custody, that departmental correspondence indicated substantial outstanding liability against the informant, and that the sanctioning authority had not been examined. Holding that these circumstances created serious doubt regarding the prosecution version, the learned Special Judge acquitted the respondent under Section 248(1)

Cr.P.C. The relevant part of the aforesaid judgment is reproduced herein for ready reference:-

> *"……The unfortunate aspect of this case is the Superintending Engineer, has mechanically signed the sanction order on 21.6.2000 to start prosecution against the accused whereas from the office of the said Superintending Engineer in the year 2003 vide Ext.A, a direction has been given to the Executive Engineer unless Rs.21,30,711/- the loss from the departmental store articles are not finalised or recovered through criminal action or civil suit from the informant the Government is to be moved suitably. Usually the Civil Engineers are prone to accept percentage from contract work unless contrary is proved. Or otherwise. In the particular case a shortage of departmental store materials is there which was about Rs.21 lakhs and odd and responsibility is going to be fixed against the Junior Engineer, the informant. He was trying to manage and take back his gratuity amount from the Government which was stopped by the authority. Again it is seen that the Superintending Engineer is according sanction purely mechanically without verifying the case records signed the sanction order in the year 2000, though before according sanction stated he perused case diaries, F.I.R. etc. he has stated that he has discussed with the I.O. (P.W.6), P.W.6, the I.O. has not stated so in his evidence in cross examination, The unfortunate aspect of the case is the Superintending Engineer who is the sanctioning authority, has not been examined in this case who might have disclosed the entire fact. In this view of the matter, the prosecution case is seriously*

doubted by this Court and merely because the hand of the accused was turned pink, the Court without appreciating the fact and circumstances of the case will put to the accused to task. As a matter of fact no NDC either was prepared nor was delayed to be prepared at the hands of the accused who is nothing but the clerk simplicitor. No such pending file was seized from the Parlakhemundi Executive Engineer, Divisional Office.

7. *In view of the above findings of this Court, the prosecution has failed to establish the charges u/s. 7 and 13(1)(d) read with Sec. 13(2) of the Prevention of Corruption Act, 1988 against the accused beyond reasonable doubt. The accused, therefore, is found not guilty u/ss. 7 and 13(1)(d) of the P.C. Act, 1988 and is acquitted u/s. 248(1) Cr.P.C. and set him at liberty. His bail bond is cancelled."*

8. The learned counsel for the petitioner-State submitted that the learned Special Judge committed a serious error in appreciating the evidence on record, particularly with regard to the demand and acceptance of illegal gratification by the accused. P.W.1, the decoy, categorically deposed that the accused demanded a bribe of Rs.500/- for issuing the No Due Certificate, and his testimony stood fully corroborated by P.Ws.2, 5 and 6. Particular emphasis was placed on the evidence of P.W.2, the accompanying witness, who

independently witnessed the transaction and corroborated the complainant's version regarding the demand, acceptance of the tainted currency notes by the accused and the concealment of the same in his pant pocket. The hand-wash and pant-pocket wash of the accused yielded positive chemical reaction, conclusively establishing acceptance of the tainted money, and that the recovery of the tainted currency notes from the accused, as consistently spoken to by P.Ws.1, 3, 5 and 6, remained substantially unchallenged during trial.

9. The learned counsel further contended that the learned Special Judge failed to apply the statutory presumption available under Section 20 of the Prevention of Corruption Act, 1988, despite the prosecution having established the foundational facts of demand, acceptance and recovery of the tainted amount. He also argued that the trial court erroneously relied upon the defence evidence and Exhibit-A while overlooking the earlier departmental proceedings reflected in Letter No.6494 dated 28.10.1997 issued by the Executive Engineer, Parlakhemundi, R&B Division. According to the counsel, the issue relating to shortage of store materials had already been

decided prior to the year 2000, and the No Due Certificate had in fact been prepared by the accused on the application of the decoy but was deliberately withheld by him. Consequently, it was submitted that the testimony of D.W.1 was inherently unreliable and ought not to have been accepted, as it stood contrary to the prosecution evidence as well as the departmental records.

10. This Court has carefully examined the judgment passed by the learned trial Court, the reasons assigned therein, and the evidence adduced by both the prosecution and the defence during trial. This Court has also considered the grounds urged in the present appeal and heard the learned counsel appearing for the petitioner-State at length.

11. Before interfering with an order of acquittal, this Court is also required to bear in mind the well-settled principles governing an appeal against acquittal. In ***Tulasareddi @ Mudakappa & Anr. v. State of Karnataka & Ors.,*** reported in ***2026 INSC 67***, the Hon'ble Supreme Court has reiterated that where 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. It has further been held that if the view taken by the trial Court is a possible view based on the evidence available on record, the appellate Court cannot overturn the order of acquittal merely because another view is also possible. Interference is warranted only when the judgment of acquittal suffers from patent perversity, is based on misreading or omission of material evidence, or where compelling and substantial reasons exist showing that the acquittal is clearly unreasonable. The relevant part of the aforesaid judgment is reproduced herein for ready reference:-

> *"29. From the aforesaid decisions rendered by this Court, it can be said that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the findings of acquittal recorded by the Trial Court. Further, if the view taken is a possible view, the Appellate Court cannot overturn the order of acquittal on the ground that another view was also possible. The following principles have to be kept in mind by the Appellate Court while dealing with the appeals against an order of acquittal:*
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> *(a) whether the judgment of acquittal suffers from patent perversity;*

(b) whether the judgment is based on misreading/omission to consider the material evidence on record;
(c) an order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference.
(d) the appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;
(e) if the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and
(f) the appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

Equally, in ***Mallappa & Ors. v. State of Karnataka*****,** reported in ***2024 INSC 104***, the Hon'ble Supreme Court has held that the presumption of innocence, which every accused enjoys during trial, gets strengthened and concretized once the trial culminates in an order of acquittal. Consequently, while exercising appellate jurisdiction against an acquittal, a higher threshold is required to rebut such reinforced presumption. Unless the findings recorded by the trial Court are manifestly unsustainable or perverse, the appellate Court ought to exercise great restraint in upsetting the acquittal. It was held thus:-

> *"24. We may firstly discuss the position of law regarding the scope of intervention in a criminal appeal. For, that is the foundation of this challenge. It is the cardinal principle of criminal jurisprudence that there is a presumption of innocence in favour of the accused, unless proven guilty. The presumption continues at all stages of the trial and finally culminates into a fact when the case ends in acquittal. The presumption of innocence gets concretized when the case ends in acquittal. It is so because once the Trial Court, on appreciation of the evidence on record, finds that the accused was not guilty, the presumption gets strengthened and a higher threshold is expected to rebut the same in appeal."*

12. The appellate jurisdiction against an order of acquittal is, therefore, not intended to facilitate a fresh substitution of the opinion of the trial Court merely because a different view on the evidence is conceivable. As reiterated by the Hon'ble Supreme Court in ***Tulasareddi @ Mudakappa & Anr. v. State of Karnataka & Ors. (supra)***, the appellate Court must first satisfy itself that the judgment of acquittal is vitiated by patent perversity, misreading or non-consideration of material evidence, or is so unreasonable that no prudent person could have arrived at such a conclusion. Equally, as held in ***Mallappa & Ors. v. State of Karnataka (supra)***, the reinforced presumption of innocence

following an acquittal places a higher threshold upon the appellate Court before upsetting the findings recorded by the trial Court. Thus, unless the conclusions reached by the trial Court are wholly unsustainable on the evidence available on record, judicial restraint rather than substitution of views remains the governing principle in an appeal against acquittal.

Applying the aforesaid principles to the present case, this Court finds that the appreciation of evidence by the learned trial Court cannot be said to be either perverse or wholly unreasonable. Merely because another view may also be possible, the same cannot furnish a ground to reverse the acquittal in exercise of appellate jurisdiction.

13. At this distant point in time, the absence of compelling and substantial reasons warranting interference, reversal of the acquittal would itself occasion serious prejudice and would be a travesty of justice. At this belated stage, presumption of innocence prevailed in favour of the opposite party for more than 15 years, as he was acquitted by the Court below. Reversing such presumption at this stage would not only be harsh, but it would be against the cardinal principle of

reformatory criminal jurisprudence. This Court, therefore, finds no legal or factual justification to unsettle the well-reasoned judgment of acquittal passed by the learned trial Court. In view of the aforementioned, this Court is not inclined to grant leave against the judgment of acquittal impugned herein.

14. Accordingly, CRLLP stands dismissed.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack
Dated the 31st October, 2026/Ashok

Signature Not Verified
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