THE HIGH COURT OF ORISSA AT CUTTACK

CRLLP No.64 of 2009
CNR No.ODHC010013072009

(In the matter of an application under Section 378(5) of the Criminal Procedure Code, 1973)

State of Orissa (G.A. Department) ……. ***Petitioner***

-Versus-

Maheswar Samantaray ……. Opposite Party

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

For the Opposite Party : Mr. H.K. Mund, Advocate along with Ms. Anima Kumari Dei, Advocate

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 01.10.2026 : Date of Judgment: 31.10.2026

S.S. Mishra, J. The present appeal is directed against the judgment of acquittal dated 02.04.2008 passed by the learned Special Judge (Vigilance), Bhubaneswar in T.R. Case No.144 of 2006, arising out of Vigilance P.S. Case No.45 of 2001, whereby the opposite party,

Maheswar Samantaray, was acquitted of the charge under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988.

2. Heard Mr. Sangram Das, learned Standing Counsel (Vigilance) for the petitioner and Mr. H.K. Mund, learned counsel for the opposite-party.

3. The prosecution case was that the opposite party, then serving as an Executive Engineer, had acquired and was in possession of assets disproportionate to his known sources of income. On receipt of reliable information regarding accumulation of assets disproportionate to the known sources of income of the opposite party, an enquiry was undertaken in respect of his assets, income and expenditure. His Government residential quarter at Unit-VI, Bhubaneswar, office, paternal house at Gobardhan Prasad, the residential premises of his brother and the office of one of his friends were searched on 10.08.2001 pursuant to a search warrant. The enquiry initially disclosed assets of Rs.36,74,225/- against income of Rs.17,35,629/- and expenditure of Rs.8,66,917/-. During investigation, however, the Investigating Officer reassessed the assets at Rs.24,64,857/-, income at Rs.17,89,346.20 and

expenditure at Rs.8,40,359.52, resulting in probable savings of Rs.9,48,986.68 and disproportionate assets of Rs.15,15,870.30. The sanctioning authority ultimately accorded sanction in respect of disproportionate assets quantified at Rs.13,09,800/-.

4. The prosecution examined six witnesses and relied upon documentary evidence. The defence did not examine any witness, but relied upon documentary materials. The prosecution witnesses included the officer who communicated the sanction order, the Building Inspector who valued the immovable properties, the owner of one of the vehicles seized during search, the Statistical Investigator who prepared the per capita expenditure report, the officer who lodged the report after enquiry and the Investigating Officer. The defence of the opposite party was one of denial of possession of disproportionate assets.

5. Upon appreciation of evidence, the learned trial Court accepted several explanations offered by the accused concerning agricultural income, income earned by his wife, a friendly loan, sale proceeds of a two-wheeler, gold ornaments, rental income and other financial resources. It also made adjustments to the valuation of certain properties

and excluded some articles and vehicles from the assets attributable to the accused. The learned trial court calculated the accused's total assets, his income with expenditure and concluded that the accused had sufficient income and savings to account for the assets in question. The learned trial court also found fault with the sanction for prosecution, inter alia, on the ground that the amount mentioned in the sanction differed from the amount assessed by the Investigating Officer and that the sanction order did not adequately demonstrate application of mind. Holding that the prosecution had failed to establish the charge beyond reasonable doubt, the learned trial court acquitted the accused under Section 248(1) of the Code of Criminal Procedure. The relevant part of the aforesaid judgment is reproduced herein for ready reference:-

> *"25. Point No. (vi): While considering the validity of sanction, it may be stated that the Apex Court in the decision reported in (1984) 2 Supreme Court Cases, 183, in the case of R.S. Nayak.... Vrs. A.R. Antula have held that the authority entitled to grant sanction must apply its mind to the facts and other evidence before according sanction as grant of sanction is not an idle formality, but a solemn and sacrosanct act, which removes the umbrella of prosecution of Govt. servant against frivolous prosecution and the aforesaid requirements must therefore, be strictly complied with before any prosecution could be launched against a public servant. It is found from the sanction order vide Ext. 33 and corrigendum Ext. 34 that sanction has been accorded for launching prosecution against the accused for possession of disproportionate assets of an*

amount of Rs. 13,09,800/-. The sanction order vide Ext. 33 was signed by the Deputy Secretary to Govt. on 28.9.04. The order indicates that the accused was in possession of the above disproportionate assets to his known source of income. But on 24.11.04 a corrigendum was issued to correct the words "known sources of income" to "beyond his known source of income". On perusal of the chargesheet I find that the I.O. submitted charge-sheet showing disproportionate assets to the tune of Rs. 15,15,870.30. But sanction was accorded for Rs. 13,09,800/-. The sanction order does not disclose as to how the same was reduced to Rs. 13 lakhs. P.W.1, the Deputy Secretary who has communicated the sanction order could not explain as to how the sanction is in respect of the amount not shown by the I.O. The sanction order does not disclose the value of the total assets, total income and total expenditure of the accused during the check period. It also does not disclose about the probable savings/assets of the accused before the check period. It is therefore patent that without application of mind a sanction order has been forwarded to the Director-cum-Addl. D.G. of Police, Vigilance from the Under Secretary to Govt. If the above sanction order is tested with the touchstone of the legal position as per the above reported decision of the Apex Court, I find that the same is not a valid one. The learned Special P.P., Vigilance appearing for the State could not support the validity of the sanction order.

It is therefore held that without application of mind, a sanction order has been mechanically sent to the Vigilance Department. It is therefore invalid in law.

26. In the result, the prosecution has failed to establish the charge U/S. 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 against the accused. Hence, the accused is found not guilty U/S. 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 and is acquitted U/S. 248(1) Cr.P.C. and is set at liberty. His bail bond is cancelled."

6. The learned counsel appearing for the State submitted that the learned trial court committed serious errors in appreciating the

evidence on record and in accepting the explanations advanced by the accused without adequate scrutiny. It was contended that the prosecution had undertaken an investigation into the assets, income and expenditure of the accused during the check period and had quantified the disproportionate assets at Rs.15,15,870.30. According to the State, the evidence adduced by the prosecution, particularly the testimony of the Investigating Officer and the documentary materials collected during investigation, established that the assets acquired by the accused were disproportionate to his known sources of income. The learned trial court, however, accepted several sources of income claimed by the accused without insisting upon satisfactory and reliable evidence to substantiate those claims.

7. Learned counsel further submitted that the learned trial court erred in accepting the alleged agricultural income, the income attributed to the accused's wife, the friendly loan of Rs.4,00,000/- allegedly received from Gadadhar Mantri, and the rental income claimed by the accused. It was argued that the mere production of income-tax returns or the assertion of a particular source of income

could not, by itself, establish the genuineness and availability of the funds claimed to have been earned or received. The State contended that the learned trial court also made unwarranted deductions and adjustments while calculating the value of the assets and expenditure, thereby materially affecting the ultimate computation of disproportionate assets. The findings recorded by the learned trial court, according to the State, were contrary to the evidence on record and resulted in an erroneous conclusion that the accused's assets were adequately explained.

8. 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 as well as the learned counsel for the respondent at length. The rival submissions have been duly considered in the light of the materials available on record.

9. 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:

(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."*

10. 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.

11. 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 18 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.

12. Accordingly, the CRLLP stands dismissed.

(S.S. Mishra)
Judge

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

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