THE HIGH COURT OF ORISSA AT CUTTACK

CRLLP No.40 of 2012
CNR No. ODHC010034132012

(In the matter of an application under Section 378 (1) & (3) of the Criminal Procedure Code, 1973)

State of Orissa ……. ***Petitioner***

-Versus-

Kansari Behera ……. ***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 18.04.2011 passed by the learned Special Judge (Vigilance), Berhampur, Ganjam in T.R. No.39 of 2001 arising out of Berhampur Vigilance P.S. Case No.36 dated 03.11.1999, whereby the

learned trial Court acquitted the opposite party of the charge under Section 13(2) read with Section 13(1)(d) 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 one Radhika Pradhan, wife of late Mathura Pradhan, submitted a report before the Vigilance Police Station on 02.11.1999 alleging that her husband, who had been working as a Peon in the Orissa Secretariat, had died while in service. According to the informant, on 28.09.1999 she had submitted applications before the Tahasildar, G. Udayagiri for obtaining a legal heir certificate for herself and caste, residential and income certificates for her daughter Sundari Pradhan. The said applications were forwarded to the office of the opposite party, who was then working as Revenue Inspector, Paburia.

It was further alleged that the opposite party demanded a sum of Rs.1,000/- from the informant as illegal gratification for submitting the requisite reports. According to the informant, on 29.09.1999 she paid Rs.300/- to the opposite party, but he demanded the balance amount of

Rs.700/- and stated that unless the remaining amount was paid, the reports would not be submitted. The informant further alleged that on 02.11.1999 she approached the opposite party and requested him to send the reports, but he declined to do so and insisted upon payment of the balance amount.

4. It was the further case of the prosecution that the informant thereafter arranged Rs.700/- and approached the Vigilance authorities. On receipt of the report at about 4.15 p.m. on 02.11.1999, the Deputy Superintendent of Police, Vigilance, Berhampur, who was camping at Phulbani, took steps for laying a trap. Independent Government witnesses were called and the usual demonstration regarding the chemical reaction of the treated currency notes was allegedly conducted. The informant was instructed to hand over the chemically treated Government Currency notes to the opposite party only on demand. The accompanying/overhearing witnesses were also instructed to observe the transaction.

5. On 03.11.1999, the Vigilance party proceeded to the office of the opposite party and the trap was laid. According to the prosecution, after

the transaction, the tainted currency notes were recovered from the possession of the opposite party and were seized along with other documents under a seizure list. A detection report was thereafter prepared. Investigation was undertaken and, after obtaining sanction for prosecution, charge-sheet was submitted against the opposite party for commission of an offence punishable under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

6. In support of its case, the prosecution examined eleven witnesses. Four witnesses were Vigilance Police personnel, four were Government witnesses associated with the trap proceedings, one was the informant and two were Clerks of the office of the Tahasildar, G. Udayagiri and Phulbani. The prosecution also relied upon a series of documentary exhibits and material objects, including the seized currency notes and bottles relating to the chemical test. The defence examined no witness. The defence of the opposite party was one of complete denial.

7. Upon appreciation of evidence, the learned trial Court principally relied upon the evidence of P.W.3, who did not support the prosecution version regarding acceptance of the bribe amount, the non-examination

of Inspector, (Vigilance) S.N. Behera, the alleged deficiencies in investigation, and the defence plea that the informant had failed to furnish supporting documents for issuance of the certificates. The trial Court also referred to the statement of the Investigating Officer that he had not ascertained the actual caste of the informant or her deceased husband and had not investigated whether she had land or a house within the concerned Tahasil area. The Court found the explanation of the opposite party that the money had been thrust upon him and that he had pushed it away to be probable. It accordingly held that acceptance of the bribe had not been proved beyond reasonable doubt and that mere proof of demand would not be sufficient for conviction. The opposite party was consequently acquitted under Section 248(1) of the Code of Criminal Procedure and directed to be set at liberty. The relevant part of the aforesaid judgment is reproduced herein for ready reference:-

> *"8. In this case, the acceptance of bribe has not been proved beyond reasonable doubt. Mere demand of bribe though proved will not carry any punishment nor a conviction can be based on that. Therefore, on the entire appreciation of the record, it is found that the prosecution is not able to prove the case against the accused beyond all reasonable doubt and as such the accused is found not guilty U/s. 13(2) read with*

Sec. 13(1)(d) of the Prevention of Corruption 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 impugned judgment suffers from a manifest misappreciation of evidence. It was contended that the decoy (P.W.8) consistently proved the demand and acceptance of illegal gratification, and her testimony stood corroborated by P.W.9, the Trap Laying Officer, P.W.1 and P.W.4, the independent official witnesses, as well as P.Ws.10 and 11, the Investigating Officers. It was argued that the learned Special Judge erroneously discarded reliable prosecution evidence merely because P.W.3 turned hostile, ignoring the settled principle that conviction can rest upon the credible testimony of the complainant and police officials notwithstanding hostility of trap witnesses.

9. He further submitted that the trial Court committed factual and legal errors in holding that the contradiction in P.W.3's evidence had not been proved through the Investigating Officer. The petitioner contended that P.W.3's previous statement was duly confronted to P.W.10, K. Venkata Rao, who had recorded it during investigation, rendering the

finding to the contrary unsustainable. It was lastly argued that the learned trial Court proceeded on an erroneous premise that the Revenue Inspector was required to issue the caste certificate, whereas his duty was only to submit an enquiry report to the Tahasildar, and his failure to submit the report facilitated the continued demand for the balance bribe amount of Rs.700/-.

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 12 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, the CRLLP stands dismissed.

(S.S. Mishra)
Judge

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

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