THE HIGH COURT OF ORISSA AT CUTTACK

CRLLP No.133 of 2013
CNR No. ODHC010058612013

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

State of Orissa ……. ***Petitioner***

-Versus-

Bhagabati Prasad Roy ……. ***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: 01.10.2026 : Date of Judgment: 31.10.2026

S.S. Mishra, J. The present appeal is directed against the judgment of acquittal dated 31.05.2013 passed by the learned Special Judge (Vigilance), Bhubaneswar, in T.R. No. 132 of 2006, whereby the opposite party, Bhagabati Prasad Ray, was acquitted of the charges

under Sections 7 and 13(1)(d), punishable under 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 the complainant, Madhusudan Ghadei, a retired teacher, had approached the office of the Controller of Accounts, Bhubaneswar, for the final withdrawal of his General Provident Fund (GPF) dues. The opposite party was then working as a Dealing Assistant-cum-Clerk in the said office. According to the prosecution, on 28.01.2006, the opposite party demanded illegal gratification of Rs.500/- from the complainant for processing his GPF file and asked him to meet him on 08.02.2006 for payment of the demanded amount. Being unwilling to pay the bribe, the complainant approached the Superintendent of Police, Vigilance, and submitted a written report. On the basis of the report, a vigilance case was registered and arrangements were made to lay a trap.

4. On 08.02.2006, the vigilance team laid a trap after treating five currency notes of Rs.100/- each with phenolphthalein powder and

instructing the complainant to pay the same only upon demand. The prosecution alleged that the opposite party demanded and accepted the tainted money, kept it in his chest pocket, and that his hand wash and pocket wash turned pink upon testing with sodium carbonate solution. The tainted notes, GPF file and other relevant articles were seized during the trap proceedings.

5. The prosecution examined eight witnesses in support of its case. P.W.2, Madhusudan Ghadei, was the complainant; P.W.1, Kanchan Kumar Barik, was associated with the trap proceedings; P.W.4, Binod Bihari Maharana, was the accompanying and overhearing witness; P.W.7 was the Trap Laying Officer; and P.W.8 was the Investigating Officer. P.W.5 was a seizure witness, while the remaining evidence included the witness associated with the forensic examination and the sanctioning authority. The prosecution also relied upon documentary evidence, including the written report, trap memorandum, detection report, seizure documents, transcript of the recorded conversation and the relevant GPF file. The defence, on the other hand, denied the allegations and contended that the opposite party had been falsely implicated.

6. Upon appreciation of evidence, the learned trial Court held that the prosecution had failed to establish the essential allegation of demand of illegal gratification beyond reasonable doubt. The learned trial Court noticed discrepancies in the testimony of the material witnesses concerning the time and place of the trap, the movements of the complainant and the opposite party between different floors of the building, and the precise place where the alleged conversation and transaction had taken place. It further considered the evidence relating to the processing of the GPF file, particularly the endorsement made by the opposite party on the note sheet, and the defence evidence suggesting that the tainted currency notes had been thrust into his pocket. Although the recovery of the tainted notes and the positive reaction of the hand-wash solution were considered, the learned trial Court held that these circumstances, in the absence of cogent and convincing evidence establishing the prosecution case, did not exclude the possibility of false implication. Holding that the prosecution had failed to prove its case beyond reasonable doubt, the learned trial court acquitted the opposite

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

> *"As it reveal during that by the time of investigation the file was already placed before the Asst. Controller and the accused had nothing to do with the file. Apart from that the learned Counsel also drew attention on the evidence of D.W.1 who is a colleague. Who is a colleague of the accused. The categorically states that on the very date of trap after taking his launch at ground floor while he was going to 3rd floor found the accused was stepping down from 2nd floor to 1st floor. He noticed a person to whom he did not know, thrust some currency notes in the shirt pocket of the accused. Under the above circumstance as discussed this plea is found to be more probable when a prosecution witness P.W.1 corroborates the fact that he found the accused was standing in the stair case of 1st floor with the accused. Besides during his examination 313 Cr.P.C. has narrated the entire fact that the date of trap no file was pending disposal with him. He has transmitted the application and also accordingly processed the file. Which find corroboration from A/1. Under the scenario, abuse of official position by the accused for pecuniary advantage by acceptance of any illegal gratification, as alleged by the prosecution is not sustainable. On this context, reliance is also placed on the reported decision the apex court in the case of Union Of India through Inspector C.B.I. Vrs.* ***Purnandu Viswas reported in SCC 2005 (12) 576***
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> *In view of the above discussion, in absence of cogent, reliable and convincing evidence non examination of Asst Controller N.K. Tripathy even if*

the recovery of tainted notes from the possession of the accused is accepted, the plea of the accused just can not be ruled out as the benefit of doubt is extended to the accused.
The accused is accordingly held not guilty U/s.7 and 13(1)(d) of the P.C. Act, 1988 and acquitted U/s.248(1) Cr.P.C."

7. The learned counsel appearing for the State submitted that the learned trial court failed to appreciate the consistent evidence of the complainant and the witnesses associated with the trap proceedings regarding the demand and acceptance of the bribe amount. The testimony of P.W.2 clearly establishes that the opposite party informed the complainant that his work had been completed and thereafter asked for money, which was paid to him. The opposite party allegedly counted the currency notes and kept them in his chest pocket. It is contended that the evidence of P.W.2 ought to have been considered together with the testimony of the accompanying witness and the other members of the trap team, rather than being discarded on the basis of discrepancies which were not material to the central allegation.

8. He further contended on behalf of the State that the evidence concerning the positive hand wash and pocket wash, coupled with the recovery of the tainted currency notes and the chemical examiner's report, furnished corroborative circumstances supporting the prosecution case. The learned counsel submitted that the opposite party's alleged explanation that the notes had been forcibly thrust into his pocket was not supported by reliable evidence and ought not to have been accepted merely because it had been put forward by the defence. The State also challenges the reliance placed upon the testimony of D.W.1, contending that the defence evidence did not satisfactorily explain the recovery of the tainted notes or displace the prosecution evidence.

9. 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.

10. 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."*

11. 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.

12. 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 13 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.

13. 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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