THE HIGH COURT OF ORISSA AT CUTTACK

CRLLP No.138 of 2012
CNR No.ODHC010059182012

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

State of Orissa (Vigilance) ……. ***Petitioner***

-Versus-

Surendra Nath Nayak ……. ***Opposite Party***

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

For the Opposite Party : Mr. S.K. Mishra, Advocate

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 08.11.2011 passed by the learned Special Judge, Special Court, Cuttack in T.R. No.3 of 2008, whereby the respondent-accused was acquitted of the charge under Section 13(1)(e) read with

Section 13(2) of the Prevention of Corruption Act, 1988 and Section 8(3) of the Orissa Special Courts Act, 2006.

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

3. The prosecution case, in brief, is that the respondent entered into Government service on 03.09.1956 as a Forester. He was promoted to the rank of Ranger in the year 1962, to the post of Assistant Conservator of Forests in June, 1974 and thereafter to the rank of Divisional Forest Officer in the year 1984. During the course of vigilance investigation, searches were conducted on 25.03.1990 at the residential house of the respondent at Sribihar Colony, Tulasipur, Cuttack, at his village house at Badahantuada and at his office at Tulasipur, Cuttack. In the course of such search, movable and immovable properties were found and the income and expenditure of the respondent and his family were assessed for the relevant check period.

4. According to the prosecution, the total assets of the respondent during the check period were initially calculated at Rs.7,81,248.27. The

expenditure was assessed at Rs.4,89,330.17 and the income at Rs.6,83,664.09. On that calculation, the likely savings were assessed at Rs.1,94,333.92 and the alleged disproportionate assets were calculated at Rs.5,86,914.35. Since the respondent allegedly failed to satisfactorily account for the difference, the Vigilance Cell, Cuttack lodged the FIR on 30.03.1990 and investigation was taken up.

5. During investigation, the Investigating Officer examined witnesses, collected the pay particulars of the respondent, seized relevant documents, obtained information concerning the consumer expenditure of the respondent and his family, caused valuation of the properties to be made and collected particulars regarding various deposits and other assets. Upon completion of investigation, charge-sheet was submitted against the respondent for the offence punishable under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act.

6. In order to establish its case, the prosecution examined 21 witnesses. The respondent examined five witnesses in defence and also examined himself as D.W.2.

7. Upon appreciation of evidence, the learned trial Court initially accepted the legal position that the prosecution was required to establish that the public servant was, at any time during the relevant period, in possession of pecuniary resources or property disproportionate to his known sources of income and that, once such possession was satisfactorily established, the burden shifted upon the public servant to account for the same. However, while recalculating the income, expenditure and assets, the learned trial Court excluded substantial amounts relating to the properties and financial transactions attributed by the prosecution to the respondent's father. The learned trial Court held that the prosecution had failed to establish that the land and building at Sribihar Colony, Tulasipur and the building at Badahantuada belonged to the respondent or that they had been acquired by him in the name of his father as benami properties. The learned trial Court further accepted certain claims regarding agricultural income of the respondent's wife and income from sale of coconuts, while rejecting the claim of income from dairy business and the alleged house rent from the Nayapalli property. The expenditure towards food, clothing, fuel and footwear was also

substantially reduced from the prosecution calculation. Upon such recalculation, the learned trial Court assessed the known income at Rs.4,54,112.13, expenditure at Rs.2,25,707.80 and assets at Rs.2,11,493.27. It accordingly found that the respondent had likely savings of Rs.2,28,404.33, which exceeded the assets allegedly held by him at the end of the check period, leaving no unexplained assets. On that basis, the learned trial Court concluded that the prosecution had failed to establish disproportionate assets and acquitted the respondent. The relevant part of the aforesaid judgment is reproduced herein for ready reference:-

> *"21. Thus on a careful consideration of the entire evidence adduced by the prosecution, I find that the prosecution failed to establish that the pecuniary Assets acquired by the accused are disproportionate to his known sources of income. As such accused cannot be liable for committing the offence u/s 13(1)(e) of the Prevention of Corruption Act punishable u/s 13(2) of the Act or u/s 8(3) of the Orissa Special Courts Act 2006.*
> *22. In the result, the accused is found not guilty for the said charge and is acquitted thereunder. He be discharged from his bail bond."*

8. The learned counsel for the petitioner-State contended that the learned trial Court committed an error in placing reliance upon the

Income Tax Returns filed by the father and wife of the accused, though such returns were admittedly filed after the search conducted by the Vigilance authorities. According to learned counsel, the said documents were post facto documents and could not have been relied upon to explain the assets or income during the relevant check period. It is further submitted that the plot of land at village Badahantuada standing in the name of the wife of the accused had in fact been purchased by the accused and, without there being adequate evidence to establish that the retired father of the accused had constructed the building thereon from his own independent resources, the learned trial Court erred in accepting the defence version. Learned counsel submitted that the financial capacity of the father and the circumstances surrounding acquisition and construction of the property were not properly appreciated by the learned Court below.

9. It is further submitted that the learned trial Court erred in extending undue benefit to the accused by enhancing the agricultural income from Rs.18,963.96/- to Rs.39,900/- and by adding a further sum of Rs.8,000/- towards income from sale of coconuts allegedly derived by

the wife of the accused, though no cogent and reliable evidence was produced by the defence to establish such income during the relevant check period. According to learned counsel, the documents relied upon by the accused in support of the alleged agricultural income were not duly proved by any competent witness in Court and, therefore, could not have been treated as substantive proof of the income claimed. It is submitted that, on a proper appreciation of the prosecution evidence and the financial circumstances of the accused, the assets found in his possession remained disproportionate to his known sources of income.

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 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.

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:

(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, the CRLLP stands dismissed.

(S.S. Mishra)
Judge

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

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Signed by: ASHOK KUMAR JAGADEB MOHAPATRA
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