THE HIGH COURT OF ORISSA AT CUTTACK

CRLLP No.2 of 2012
CNR No.ODHC010059742012

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

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

-Versus-

Bidyut Kumar Panigrahi ***…….*** ***Opposite Party***

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

For the Opposite Party : Mr. Suraj Mohanty, 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 26.03.2011 passed by the learned Additional Special Judge (Vigilance), Bhubaneswar in T.R. No.146 of 2006, arising out of Bhubaneswar Vigilance P.S. Case No.5 of 2004, whereby the respondent

was acquitted of the charges under Section 7 and Section 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 and Mr. Suraj Mohanty, learned counsel for the opposite-party.

3. The prosecution case is that the respondent, while serving as Assistant Engineer (S.D.O.), Rural Water Supply and Sanitation Sub-Division, Khurda, was entrusted with processing the bills submitted by contractor Rabindra Kumar Das after completion of two tube-well works executed under agreements entered into with the Executive Engineer, R.W.S.S. Division, Bhubaneswar. It was alleged that the respondent demanded illegal gratification of Rs.20,000/- for approving and passing the contractor's bills and, after negotiation, agreed to accept Rs.10,000/-.

Unable to withstand the alleged illegal demand, the complainant approached the Superintendent of Police, Vigilance, Bhubaneswar Division, and lodged a written report. A trap was organized on 12.03.2004 after demonstration of phenolphthalein powder and sodium carbonate solution to the complainant and independent

witnesses. The tainted currency notes amounting to Rs.10,000/- were treated with phenolphthalein powder and handed over to the complainant with instructions to pay the amount only upon demand by the respondent.

4. According to the prosecution, the complainant met the respondent near the portico of his residence at Khurda and paid the tainted money. Immediately thereafter, the vigilance officials entered the spot, recovered the tainted currency notes from the respondent, conducted hand-wash tests, which yielded positive chemical reaction, and prepared the detection report. After completion of investigation and obtaining sanction for prosecution, charge-sheet was submitted for offences punishable under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act.

5. During trial, the prosecution examined twelve witnesses, including the complainant, independent trap witnesses, chemical examiner, sanctioning authority, trap laying officer and investigating officer. The defence examined two witnesses and produced documentary evidence in support of its plea.

6. Upon appreciation of evidence, the learned trial Court acquitted the respondent after holding that although acceptance of Rs.10,000/- stood admitted, the prosecution failed to establish beyond reasonable doubt that the amount constituted illegal gratification. The trial Court accepted the defence plea as highly probable after finding that the complainant had prior enmity with the respondent, documentary evidence supported earlier purchase of tender papers, the respondent had consistently explained from the very inception that the money represented tender dues, there existed supporting civil litigation regarding repayment of tender money, and suspicious circumstances surrounded the alleged submission of the complainant's bills. Consequently, the respondent was acquitted under Section 248(1) Cr.P.C. The relevant part of the aforesaid judgment is reproduced herein for ready reference:-

> *"12. I have carefully gone through the evidence led by the prosecution as well as defence. I find sufficient circumstances throwing cloud about execution of agreement and undertaking the work by the informant in question. Similarly, I find suspicious circumstances about submission of the bills before the accused so as to get any official favour from him by the complainant. On analysing*

the defence evidence in such background, the plea of the defence that the money was accepted by the accused towards the dues of the tender paper, appears highly probable, on consideration of the admitted enmity between the accused and the complainant.

13. In the result, I hold that the prosecution has miserably failed to bring home the charges U/s.13(1)(d) read with section 13(2)/7 of Prevention of Corruption Act,1988 and as such the accused is acquitted from the alleged offences under the provisions of Section 248(1) Cr.P.C. Since he is on bail, he be discharged from the bail bond."

7. The Petitioner-State has assailed the judgment of acquittal by contending that the learned trial Court committed a serious error in accepting the defence plea that the opposite-party had received the amount towards tender dues. It was urged that while the opposite-party initially claimed that the amount represented tender money, he subsequently attempted to develop an entirely different defence through the evidence of defence witnesses by asserting that the complainant had purchased tender papers with money borrowed from other contractors and that the opposite-party had retained the complainant's tender papers until repayment of such loan. According to the Petitioner, such a defence is inherently illegal and wholly unacceptable, as no public

servant is authorized to retain tender papers or act as an intermediary for recovery of private loans between contractors. It is further contended that when the opposite-party failed to substantiate his original explanation with credible evidence, the trial Court ought to have rejected the defence as highly improbable instead of treating it as sufficient to create reasonable doubt.

8. The petitioner further submitted that the trial Court failed to properly appreciate the overwhelming prosecution evidence, including the FIR, preparation report, detection report, chemical examination report and the testimony of the prosecution witnesses, all of which consistently established recovery of the tainted G.C. notes from the respondent and the positive chemical reaction during the trap proceedings. It was argued that once recovery of the tainted currency from the respondent stood established, the statutory presumption under the Prevention of Corruption Act operated against him, thereby shifting the burden upon him to rebut the presumption through cogent and convincing evidence, which he failed to do. The petitioner also contends that the trial Court placed undue reliance upon the hostile

portions of the evidence of P.W.2, the accompanying witness, and upon the defence evidence, while ignoring the consistent prosecution evidence regarding demand and acceptance of illegal gratification, and that such improper appreciation of evidence has resulted in an erroneous order of acquittal warranting interference by this Court.

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 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.

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 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.

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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